

BOOKS lately printed for
J. HOOKE.

1. **L**EX Maneriorum: Or the Law and Customs of *England* relating to Manors and Lords of Manors, their Stewards, Deputies, Tenants, and others, viz. of the Lords Right to Deodands, Felons Goods, Waifs, Estrays, Wrecks, and Goods of *Felo de Je*, &c. Of Copyhold Estates, Courts-Leet, Courts-Baron, and of Amerciaments, Fines and Heriots, and how to be recovered, &c. The Whole being a methodical Collection of the Cases dispersed in the Volumes of the Law; to which is added an Appendix of all the Modern Entries relating to the said Cases, and proper Tables. By *W. Nelson* of the *Middle-Temple*, Esq;

2. An Abridgment of the Common Law, being a Collection of all the principal Cases argued and adjudged in the several Courts of *Westminster-hall*: The Whole being digested in a clear and alphabetical Method, under proper Heads; with several Divisions and Numbers under each Title, for the more ready finding any Judgment or Resolution of the Law Cases, whereby the Opinion and Judgment of the Courts may be seen in an exact Series of Time, and what Alterations have been made in the Law by subsequent Statutes and Judgments, brought down to the Year 1725. By *W. Nelson* of the *Middle Temple*, Esq; In 3 Volumes.



THE
Laws of ENGLAND
Concerning the
GAME

OF

Hunting, Hawking, Fishing and Fowling, &c. And
of Forests, Chases, Parks, Warrens, Deer, Doves,
Dove-cotes and Conies, and all other Game in general:

And also concerning

Setting-Dogs, Greyhounds, Lurchers, Nets, Tun-
nels, Lowbels, Guns, and all Manner of Engines and
Instruments mentioned in the several Statutes to destroy
the Game, shewing who are qualified by Law to keep
and use them, and the Punishments of those who keep
them, not being qualified.

The Whole

Being a summary Collection of all the Statute-
Law concerning the Game; and of all the Cases, Reso-
lutions and Judgments in the several Courts of Record
at *Westminster* relating thereunto.

Together with

Two Precedents of Declarations; the one in an Action of
Trespass against an idle and dissolute Person for hunting,
&c. in which the Plaintiff (if he recover) is to have full
Costs; and the other in an Action of Debt upon the Sta-
tute 8 Geo. for a pecuniary Penalty, forfeited by that
Law, in which the Plaintiff (if he recover) shall have
double Costs.

By a Barrister at Law.

In the SAVOR:

Printed by E. and R. NUTT, and R. GOSLING,
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Church in *Fleet street*. 1727.

LAWS OF ENGLAND



THE
PREFACE.

THE following Treatise
was written by one
who still retains some
Sense of that Pleasure, which he
formerly took in Hunting, tho'
'tis a Sport to be followed only
by a superior Order of Men;
and so it was from the very
Beginning of the World; for
the first Huntsman we find on
Record, was a mighty Man
upon the Earth, and the next
was an Elder Brother.

Our

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Our Legislators tell us, that hunting the Hare is a Recreation for Kings and Noblemen ; and that destroying the Game by Persons not qualified by Law, is prejudicial to the Nobility and Gentry, and therefore almost in all Reigns, Statutes have been made to preserve the Game from Destruction, by the meaner Sort of People ;— and from the first Statute of that Nature, it may be reasonably inferred, that the Law-makers accounted such Persons very bad Christians ; for they tell us, that their usual Time to hunt was on Holidays, when the good Christians were at Church ; and all the Statutes made for the Preservation of the Game,

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Game, agree in the Character of such Men; for they tell us, that they are of the vulgar Sort, and of little or no Worth; that they are loose, idle, disorderly and dissolute Persons; that they ruin themselves and Families, and damnify their Neighbours; and by neglecting all lawful Employments, they commonly turn Highway-men and Burglars.

Now that they who are qualified by Law to take the Game, may know what Right and Property they have in them; and that the Persons before-mentioned, who are the common Destroyers thereof, may avoid those Punishments, which may justly be inflicted on them
upon

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upon Conviction for this Offence; all the Laws of England concerning the Game are here collected and published in a more clear and easy Method, than hitherto have been done; and all the Engines, Devices, and Instruments mentioned in the several Statutes to destroy them, are placed in an alphabetical Manner, under distinct and proper Titles; and each Title divided into two Parts; the one consisting of all the Statutes now in Force for the Preservation of the Game; and the other of all the Law Cases, which have been adjudged relating to that very Title; so that at one View, without turning to the Statute-Book at large,
or

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or to any Collection of Statutes concerning the Game, or to the Voluminous Reports, in which Cases of this Nature lay dispersed; the Law in general may be seen and understood under each Title to which it relates.

Here the Reader will find that both corporal and pecuniary Punishments have been inflicted on Persons prohibited by Law to destroy the Game; but such Punishments have not deterred them from committing this Offence; one Reason may be, because the Proprietors of the Game have no Benefit by prosecuting such Offenders, unless they are likewise the Informers, which is a more opprobrious Word than a Poacher.

Be-

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Besides, the Execution of all the Statutes made for the Preservation of the Game, is vested in the Justices of Peace, and in many Cases with a Power of mitigating the Forfeitures incurred by the Breach of those Laws; and by this Means the Offenders often escape with a small Punishment.

And 'tis to be observed,
* 43 Eliz. c. 6. that the * Statutes which give
22 & 23 C. 2. c. 9. no more Costs than Damages in
Actions of Trespass, were made
(as the Law-makers tell us) to
prevent trifling and vexatious
Suits to be brought against the
good Subjects; but yet the
bad ones have an equal Benefit
of these Laws; for if an Ac-
tion of Trespass is brought
against

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against any idle and dissolute Person for hunting in the Plaintiff's Grounds, he may at the Expence of 12 l. recover 12 d. Damages, and no more Costs.

'Tis true by a subsequent ^{* 4 & 5 W. c. 23.} Statute full Costs are given in such Cases; now though that might be some Satisfaction for the Expences of the Suit, yet it was no Recompence to the Party for his Trouble in the Prosecution; therefore a more effectual Remedy was provided by the Statute † 8 Geo. and † 8 Geo. c. 19. that is an Action of Debt for a pecuniary Penalty, any Offender shall be liable to pay upon a Breach of any of the Game Laws, on a Conviction before a Justice of the Peace; where-
in

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in if the Plaintiff recover, he shall have double Costs.

And to encourage Prosecutions of this Nature against those who destroy the Game, Care hath been taken to draw and publish the Forms of two Declarations in both the said Actions, which may be seen in this Treatise under the Title Game.



THE

T H E

INTRODUCTION.

BEFORE I treat of the several Laws relating to the Game, in the Manner I propose, it may be necessary to mention something concerning *Forests*, which are the grand Receptacles of the Game.

And first, as to their Antiquity ^{1 Inst.} my Lord *Coke* tells us, it cannot be ^{319.} known by any Record or History, except *Newforest*, which was erected by King *William* the First, as a Conqueror; and * *Hampton-Court*, * *See the* which was erected by King *Hen. 8.* *Title* into a Forest, or rather a Chase, but ^{Hamp-} not as a Conqueror; for he could ^{ton-Court} not ^{Forest.}

a not

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not do it without the Consent of the Freeholders, whose Lands were afforested; and therefore he made an Agreement with them in Writing, which was afterwards confirmed by Act of Parliament.

However, 'tis certain, that this and all other Forests are governed by proper Judges, and by their own Officers, and by peculiar Laws different from the Common Law in many Respects, which may be seen in the following Cases; and because neither Mr. *Manwood*, or any other Person who hath designedly treated of this Subject, hath not told us what those Laws are, but have left us to guess at them by the Liberties which were restored to the People by the *Charter of the Forest*; therefore I thought it might be proper to this Undertaking, to give some short Account of them.

'Tis not to be doubted but that the Forests were governed by their own Laws in the *Reign of Hen. 1.* and long before; but I find none of them on Record in that Reign, nor in the Reign of any of his Ancestors; the first are those which
were

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were published by Sir Henry Spelman in his *Codex*, and lately republished by Dr. * *Wilkins* in *Latin*, which I have thus transcribed in *English*.

* Liber
cui Titulus Leges
Anglo-Saxonice.

§. " The Laws of the Forest
" made by King † *Richard*, by and † *This*
" with the Assent and Consent of *King*
" the Archbishops, Bishops, Abbots, *Richard*
" Earls, Barons, and Knights of the *the First*
" whole Kingdom. *converted*
several
Woods of
other Men into Forests, as may be seen in Charta
Forestæ, cap. 3. He was the Son of Hen. 2. and for
his Valour called Cœur de Lion. Anno 1189.

(1.) §. " First the King ordains,
" That if any Person commit a For-
" feiture in *Hunting*, or in any other
" Thing in his (the King's) Forests,
" let him not expect that the King
" will have any Mercy upon him,
" as formerly to take his Cattle for
" a Forfeiture, for his hunting in the
" King's Forest; for if any Person
" hereafter shall incur such Forfeiture,
" and be convicted thereof, he shall
" have the utmost Justice, and such
" as was done in the Reign of King

a 2

" * *Henry*

* *Hen. 1.* " * *Henry* his Grandfather, (*viz.*)
Anno " he shall lose both his *Eyes* and
1100. *he* " *Testicles.*
was called
Beau-
clerk for his *Learning*, and was *King* whilst his elder
Brother was living, whose *Eyes* he put out.

(2.) " *Item*, The King ordains,
 „ That no Person shall have *Bows*
 „ and *Arrows*, or *Dogs*, or *Deer-*
 „ *leaps* in the *Forests*, unless he hath
 „ the King's *Warrant*, or of some o-
 „ ther Person who hath *Authority* to
 „ grant him such *Warrant*.

(3.) " *Item*, The King ordains,
 „ That no Person shall do any *Thing*
 „ to the *Destruction* of his *Woods*,
 „ or commit *Waste* within his *For-*
 „ *ests*; but grants, that they may
 „ take of his *Woods* what is neces-
 „ sary, without committing *Waste*;
 „ and this upon the *View* of his *For-*
 „ *rester* and *Verderors*.

(4.) " *Item*, The King commands,
 „ That all they who have *Woods*
 „ in his *Forests* do appoint proper
 „ *Foresters* for those *Woods*, for
 „ whom they shall be *Pledges*; or
 „ that

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" that they shall find such sufficient
" Pledges who shall make Satisfaction,
" if the Foresters shall commit
" any Forfeitures in what belongs to
" the King.

(5.) " *Item*, He commands, That
" his Foresters shall take Care that
" the Foresters, Knights, and others
" who have Woods within the Boundaries
" of the King's Forests shall
" not destroy their Woods; for if
" they do, let them, whose Woods
" they are, know, that they shall
" make Satisfaction either by themselves
" or by their Lands, and no
" other Person.

(6.) " *Item*, The King commands,
" That his Foresters shall make Oath
" that they will (as far as they are
" able) keep such * *Effarts* as he * *From*
" (the King) shall make of his Fo- *the Latin*
" rests; and that they shall not di- *Exer-*
" sturb any honest Men in what *tum,*
" the King hath granted to them *which is*
" concerning their own Woods. *a pulling*
up by the
Roots; 'tis
commonly wrote Assart.

* See Po-
ftea in
Titulo
Pannage.

† See Po-
ftea in
Titulo
Agift.

(7.) “ *Item*, He commands, That
“ in every County where the King
“ shall hunt, that twelve Knights
“ be appointed to take Care of his
“ Hunting, and of the Vert in his
“ Forests ; and that four Knights be
“ appointed to *agift* his Woods, and
“ to receive his * *Pannage*, and to
“ keep and guard the same.

(8.) “ *Item*, He commands, That
“ no Man shall † *agift* his Woods
“ within the Boundaries of his Fo-
“ rests, before his (the King’s) Woods
“ are *agifted* ; and all Men are to
“ know, that the Time of the
“ King’s *Agiftment* be given fifteen
“ Days before the Feast of St. *Mi-*
“ *chael*, and continues fifteen Days
“ after the said Feast.

(9.) “ *Item*, The King commands,
“ That if his Forester hath the
“ Keeping of his royal Woods, and
“ they are destroyed, and no Body
“ knows or can shew any just Cause
“ why they were destroyed, nothing
“ shall be taken of such Forester but
“ his *Body only*.

(10.) “ *Item*,

(10.) “ *Item*, He commands, That
“ an Ecclesiastical Person shall not
“ forfeit any Thing for *Hunting* in
“ his (the King’s) Forests; and he
“ strictly commands his Foresters,
“ that if they shall find any of them
“ so forfeiting, that they shall by no
“ Means lay Hands on them, either
“ to resist or apprehend them, be-
“ cause the King will warrant what
“ they do.

(11.) “ *Item*, The King commands,
“ That all the *Effarts*, as well new
“ as old within the Forests, shall be
“ viewed every third Year, and like-
“ wise all * *Purprestures*, and all * *See in*
“ Waste done in the Woods; and *Titulo*
“ that each of the said Offences be *Purpre-*
“ enrolled. *stures.*

(12.) “ *Item*, The King commands,
“ That the Archbishops, Bishops,
“ Earls, Barons, Knights and Free-
“ holders, and *all Men whatsoever*,
“ do appear upon the Summons of
“ the *Chief Justice in Eyre*, to plead
“ their Pleas in the Forests.

(13.)

(13.) “ And ’tis prohibited at
 “ those Pleas of the Forest, that
 “ no Cart shall go out of the Com-
 “ mon Way in the Forest; and that
 “ no Hogs shall be in the King’s
 “ Forest in the * Fence-month, which
 * *In the Record ’tis Fornesun.* “ is fifteen Days before the Day of
 “ the Birth of St. John the Baptist,
 “ and fifteen Days after the said
 “ Feast.

(14.) “ And let all Men know,
 “ that whosoever shall commit a-
 “ ny Forfeiture in *Hunting* in the
 “ King’s Forest, and shall be at-
 “ tainted thereof, he shall be in the
 “ Mercy of the King to lose his
 “ Eyes and Testicles.

(15.) “ He who commits any
 “ Forfeiture in the King’s Forests
 “ in the *Vert*, either by † cut-
 “ ting it, or the § *Branches* or
 † *Culpa-* “ *Boughs*, or by * cutting Turfe or
 tura. “ Heath, or Underwood, or by *Ef-*
 § *Efsbran-* “ *sart*, or any new Purpresture, by
 catum. “ Hedge or by Ditch; or by re-
 * *Escoria-* “ moving a Mill or † *Sheepcoat*, or
 tio moræ. “ † *TisBec-*
 caria, *in the Record, I read it Bercaria.*

“ any

“ any other Houses, or by diverting
“ a Water-course, or by Hay, or by
“ mowing without the Hedges, or
“ without the Ditches, shall be *
“ fined at the King’s Mercy, unless * Erit in
“ he hath the Warrant of the King’s cordia
“ Verderors or Foresters for what he Regis de
“ doth. pecunia
sua.

(16.) “ Likewise he who carries Bows and Arrows, or leads
“ Dogs uncoupled thro’ the King’s
“ Forest, and shall be attainted thereof, shall be in the Mercy of the
“ King.

(17.) “ ’Tis likewise ordained, That in every third Year
“ there shall be a *View of the Forest*; but that all the Matters a-
“ foresaid shall be viewed in the
“ Regard; also the *new Effarts* are
“ to be viewed in the Regard, and
“ what Land hath been sown since
“ the last Regard, and with what
“ Grain; for Woodland newly converted into Arable belongs to the
“ King; but if old *Affart* shall be
“ sowed with Wheat, or § the King § Siligine.
“ shall have 13 d. for every Acre so
“ sowed;

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“ sowed; and if sowed with Oats,
 “ Barley, Pease, Beans, or any other
 “ Grain, the King shall have 6 d.
 “ for every Acre.

* Hen. 2. (17.) “ ’Tis to be known, that
 Anno “ in the Time of King * Henry
 1154. “ the Son of Maud the Empress, it
 which “ was allowed to make Ditches in-
 Maud “ stead of Hedges, within the Boun-
 was the “ daries of the Forest; and at Wood-
 Daughter “ stock the said King ordained, that
 of Hen. 1. “ he who committed a Forfeiture in
 this King “ hunting within his Forests, should
 was di- “ for the first Offence give Pledges,
 sturbed by “ and so likewise for the second
 Archbishop “ Offence; but for the third Of-
 Becket; “ fence, no Pledges shall be taken,
 but he was “ but the Body of him who commit-
 comforted. “ ted the Forfeiture.”
 by Rosa-
 mond.
 † In Ox-
 fordshire.

By these Laws we may perceive
 that *Hunting* in the King’s Forests
 was punished with the greatest Se-
 verity, (*viz.*) with the Loss of *Eyes*
and Testicles; this was the first Law,
 and to strike a greater Terror into
 the People, ’tis repeated in the four-
 teenth Law, that some Offences were
 finable at the Will of the King; and
 some.

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some were never to be pardoned, that no Person whatsoever was exempted from appearing at the Court of Justice-Seat, upon a Summons of the Chief Justice in Eyre; and the Historians of those Times tell us how grievously the People were oppressed by those personal Services, they were bound to perform at those Courts in the Forests; which Oppressions continued till the Reign of King *John*; and though that King was always engaged in Wars, either abroad or at home; and though this Kingdom was under an Interdict for six Years and upwards, yet he still was mindful of these Forest Laws; and for that Purpose he directed a Precept to *Hugh Nevil*, at that Time Chief Justice in Eyre, &c. commanding him to govern the Forests by the same Laws, with which they were governed in the Reign of his * Father, notwithstanding any Grant he should make to any Person whatsoever, till at last the Variance encreasing between him and his Barons, who stood firmly for their Liberties, and to be eased of the Oppressions by the Officers and Courts of the
Ko-

* H. 2.

Forest; he granted this Charter, which he did (as the Record tells us) having God before his Eyes, and to save his own Soul, and the Souls of his Ancestors and Successors, and for the Exaltation of Holy Church, and for the Profit of his Kingdom for ever; and that he granted the Liberties therein contained, willingly and freely for himself and his Heirs, to have and to hold the same to the Kingdom of *England* for ever.

Which Charter was confirmed by his * Son and Successor in peaceable Times, when he was very young, not † twenty Years of Age; and soon after a Curse was denounced in *Westminster-hall* by Archbishop *Boniface*, in the Presence of the King, and several Bishops and Noblemen against those who should break this Charter; and for the greater Solemnity of this Appearance, the Bishops were apparelled in their *Pontificalibus*, and had each of them a lighted Taper in his Hand; and then the Archbishop denounced the Excommunication in these Words.

* Anno
9 H. 3.
† He was
but ten
Years old
when his
Father
died, Anno
1216.

ff. By

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ff. By the Authority of God the Father, the Son and the Holy Ghost, and of the glorious Mother of God, and perpetual Virgin *Mary*, of the blessed Apostles *Peter* and *Paul*, and of all the Apostles and Martyrs of blessed *Edward King of England*, and of all the Saints of Heaven, we excommunicate, accurse, and from the Benefit of our Holy Mother the Church, we sequester all those who hereafter shall violate, break, diminish, or change the free Customs and Liberties granted in the *Charter of the Forest*, by our Lord the King to the Prelates, Earls, Barons, Knights, and other Freeholders of the Realm; and all who secretly or openly by Deed, Word, or Council, shall bring in Customs, and keep them when brought in against the said Liberties, or any of them, and all those who shall presume to judge against them; all and every which Persons that shall willingly commit any of the Premisses, let them know that they incur the aforesaid Sentence *ipso facto*, and those who commit them ignorantly ought to be admonished; and except they reform themselves within
fif-

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fifteen Days after such Admonition, and make full Satisfaction for what they have done *at the Will of the Ordinary*, shall be from thenceforth wrapped in the said Sentence, to the perpetual Memorial of which Thing we the aforesaid Prelates have put our Seals to these Presents.

This Charter was again confirmed in the 35th Year of his Son and Successor *Ed. 1.* who for the Honour of God (as 'tis in the Record) and of Holy Church, and to the Profit of the Realm granted for himself and his Heirs, that the Charter of the Forest, which was made by the common Assent of the Realm, shall be kept in every Point without Breach; and that the said Charter shall be sent to the *Justices in Eyre* under the Great Seal, and to all Sheriffs of Shires and all other Officers, and to all the Justices throughout the Realm with the King's Writs, in which shall be contained, that he causeth the aforesaid Charter to be published, and to declare to the People, that he confirmed it in all Points; and that his Justices, Mayors, and other Ministers, who have the Laws of the Land to guide under the King, shall allow the said Charter.

35 Ed. 1.
This King
was the
Son of H. 3.
and succeeded his
Father
An. 1272.
and was
surnamed
Long-
shanks.

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Charter pleaded before them in Judgment in all Points, for the Wealth of the Realm ; and if from thenceforth any Judgment should be given contrary to the Points of the said Charter, that it should be undone, and holden for naught ; and that the said Charter shall be sent under the Great Seal, to every Cathedral Church throughout the Realm, there to remain, and to be read before the People twice every Year ; and that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those who by Word, Deed, or Counsel, shall do contrary to the said Charter ; and that the said Curses be denounced twice every Year, and published by the Prelates ; and that if any of them shall be remiss in the Denunciation of the said Sentences, then the Archbishops of *Canterbury* and *York* for the Time being, shall compel and distrain them, to the Execution of their Duty.

In Pursuance of this Confirmation of the Charter of the Forest, † *Robert Winchelsea*, then Archbishop of *Can-* † *About the latter End of the*
Reign of Ed. 1. he died Anno 1313. 6 Ed. 3.
Can-

Canterbury, enjoined all Persons of what Estate soever, that they, as far as they were able, should uphold and maintain the same in all Points; and that they who should resist or break, or should procure, counsel, or in any wise assent to resist or break it, or by Word or Deed go about openly or privately by any Manner of Pretence to break it; that they should stand excommunicated and accursed, and be sequestred and expelled from the Body of Christ, and from all the Company of Heaven, and from the Sacraments of Holy Church.

This Censure in the primitive Times of Christianity, when Men were in Earnest with Religion, was always decreed by and with the Consent of the Church in general, and upon a full Hearing of the Matter; but we see to what an exorbitant Power the Clergy were advanced, when the aforesaid Sentences were denounced; for by them the People were excommunicated without being heard, and not for any Contempt to the Church, but to the Charter of the Forest; by which
the

the People of *England* recovered as many and as great Privileges and Liberties, as they did by *Magna Charta*.

For before this Charter of the Forest was granted, the Kings of *England* claimed a Prerogative to make Forests of the Lands of any of their Subjects; so that no Man could say, the Lands of which he was possessed were his own; and when they were converted into Forests, those who hunted there, tho' on their own Lands, were punished with the utmost Severity, even with the Loss of their *Eyes and Testicles*, sometimes with the Loss of Life; but the mildest Punishments were Imprisonments, Abjuration, and a grievous Fine.

'Tis true, though the Lands of the Subjects were made Forests, the Inheritance still continued in the Proprietors; but that signified very little, for they had no Power over such Lands, though they were their own; for being now subject to the Laws of the Forest, they could make no Profit of them; they could not so much as fell Timber, for the necessary Repairs of their Houses, without a Licence from the Chief Justice

stice in Eyre, and that could not be obtained without a great Expence and Trouble, and sometimes not at all; they could not take in Agistments, nor plow nor sow their Lands with Corn; but they must still lie open to the Deer; 'tis true, they might enclose them with a low Hedge, so that the Deer might easily leap over.

And as the Lands of many were converted into New Forests by the *Norman Kings*, so there were many Courts erected and made peculiar to such Places; where the People were bound to attend upon a Summons, or to be amerced, if they neglected to appear, tho' they did not dwell within the Boundaries of the Forest, and they were very much oppressed by the frequent holding such Courts.

There were likewise many Extortions committed by a Multitude of Officers, under Pretence of taking Care of the Forests; for the *Regarders* would make their Presentments every Year, which they ought not to do but once in three Years, and not only of Offences pretended to be done within the Forest, but out of
the

the Boundaries thereof ; and though such Presentments were void, yet the Party grieved must be at the Expence to discharge himself by Plea at the Swainmote Court.

The very *Dogs* as well as Men were punished ; for no Man could keep a Dog near the Forest, without cutting off three of the Claws of the Forefeet, under the Penalty of being amerced 3 s. every third Year for every Dog which had Claws not cut ; and this was to disable them from running after the Deer.

The Foresters likewise kept Ale-houses in the Forests, and compelled the People to come thither and spend their Money, for Fear of their Displeasure ; and no Man could enjoy his Common quietly, if he did not make Presents to them of Lambs, Pigs, Corn, Hay, or some other Thing worth their Acceptance ; besides, they exacted Toll not only of those who came into the Forest with loaded Carts and Horses, but generally of every Man who travelled through it.

Then if any Trespass was done in the Forest, and the Offender could not be taken, he was prosecuted to
the

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the Outlawry ; and if it happened that he was afterwards taken upon that Proceſs, he was certainly committed to Priſon, there to remain without Bail, and never to be diſcharged, but by a ſpecial Warrant from the King, or the Chief Juſtice in Eyre ; all which was remedied by this Charter, which the Reader will ſee, and the Charter it ſelf, under the ſeveral Titles in the following Treatiſe, written in an Alphabetical Method, together with every Thing concerning the Game throughout.



Agist

Agist and Agistor.

A *GIST* is derived from the *French* Word *Giste*, (*i. e.*) a resting Place; for when the Cattle of Strangers are taken in the King's Forests to pasture, they may properly be said to rest there.

Agistors are those Officers who attend the King's Woods and Lands in his Forests, to receive and take in the Cattle of the Inhabitants there, who have *Common of Herbage* for all their Cattle, commonable by the Laws of the Forest; they may likewise take in *Hogs* and *Swine*, which are not commonable by the Forest Law; and this is to agist the Woods and Hedge-rows, which is called * *Which* Pannage, the Time of Taking in these *see in Tit.* Cattle began 15 Days before *Mi-Pannage.* *chaelmas*, and lasted 15 Days after;

B

but

Agist and Agistor.

but for taking in *Cattle commonable* to agist the Pasture, the Time began about 15 Days before *Midsummer*, and continued till 15 Days after; and then the Agistors were to receive the Money due for the Herbage, which must be done in the Presence of the Verderors and Foresters, that it may be recorded at the next Swainmote Court, which is to be held on *Holy-rood Day*.

These Officers are made by the King's Letters Patent, and there are usually four of them in every Forest where the King hath any Pannage, whose Business is likewise to present Trespasses in the Forests, done by any Manner of Cattle, and if they present any Thing else 'tis void; and therefore one *Richard Finch* was fined 10 *l.* at a Justice-Seat held for the Forest at *Windsor*, for drawing the Presentments of the Agistors, and making them present what did not belong to their Office.

W. Jones
280.

Before the Making the Charter of the Forest, he who had Woods and Lands in the Forest, could not agist his own Cattle there; but by that Charter it was provided, that every Freeman might take Agistments in his



Angle.

3

his own Woods, within the King's Forest, at his Pleasure, and that he should take Pannage, and drive his Swine freely thro' the King's Woods, to agist them in their own Woods, or where they would; and that if their Swine should stay one Night in the Forest, nothing shall be taken for such Stay.

But yet Men could not agist *Goats* or *Sheep* there, without a special Licence for that Purpose, though they were his own; because *Goats* tainted the Herbage every where, so that the Deer would not eat the Pasture where they fed, and *Sheep* eat it so near the Earth, that they left very little Herbage behind for the Beasts of the Forest.

Angle.

Keeping an Angle to destroy ⁴ & ⁵ W. Fish, and being found upon a Search- c. 23. Warrant, shall be seised and destroyed.

Apprentices.

4 & 5 W.
c. 23.

Apprentices and inferior Tradesmen neglecting their Trades, and following Hunting, Fishing, and other Game, unless in Company of their Masters qualified to hunt, shall be carried before a Justice of Peace; and being convicted before him upon the Oath of one Witness, shall forfeit not exceeding 10 s. nor under 5 s. one Moiety to the Informer, and the other to the Poor; &c. to be levied by Warrant by Distress and Sale, and for want of Distress, shall be committed to the House of Correction not exceeding one Month, nor under ten Days, there to be whip'd and kept to hard Labour; and if

* See the *sued for a * wilful Trespass, shall pay*
Form of full Costs as well as Damages. See
the Decla- inferior Tradesmen.
ration in
Tit. Game.

Assart.

21 Mart.

The Etymologists are not agreed in the Derivation of this Word; some will have it to be from *A*, which is a privative and *Sart*, which in the German Language signifies a Wood; some will have it derived from the French *Effarter*, and probably for that Reason 'tis wrote *Effart* in some old Records; as for Instance in the Charter of Privileges granted by Hen. 1. to the Abbot of Ramesbury, one was *quietus esse de Effartis*; others derive it from *Exaratum*, which signifies to plow or cut up, and by Contraction *Exartum*; but the learned † Glossographer was of Opinion, † Spelman that 'tis derived from the Latin *Ex- in voce. ertum*, which signifies to pull up by the Roots; but they all agree in the Signification of the Word, which is to grub up or clear a Ground of Bushes and Shrubs, &c. and make it plain and fit for Tillage; and *Man-wood* tells us, 'tis an Offence committed in the Forest by plucking up those Woods by the Roots, which are Thickets, and Covert for the Deer,

В 3.

and

and that 'tis the greatest Offence which can be done to the Vert and Venifon, for 'tis more than *Waste*; for that is only the Felling and Cutting down the Coverts, which in Time will grow again; but *Assart* is a Grubbing them up by the Roots, by which they are utterly destroyed, and this is done purposely to make the Grounds arable; and if they are afterwards plowed and sowed, the *
 * W. Jon. 269. Offender shall not only be fined at the Justice-Seat, but Inquiry shall be made of the Value of the Corn, that it may be answered to the King.

'Tis to be observed, that all Woods which were taken into the Forests from the Beginning of the Reign of
 † *This was about 12 Years.* † *Rich. 1.* to the second Year after the Coronation of King *John*, were by the Charter of the Forest restored to the right Owners; but yet they were still liable to be punished for *Assart*, and other Offences done in the Forests, whilst their Woods and Lands remained Parcel thereof; therefore, by that Charter it was granted, that they should be quit of *Assarts* to the Beginning of the aforesaid Reign for ever; but if from thenceforth any Person should commit
 new

Attachment.

7

new *Affart* without Licence, the Offender should answer for the same to the King; which Distinction of old and new *Affart* is observed in some Forests to this Day.

Attachment.

The Court of Attachments is one of the three Courts incident to a Forest, the other two are the *Swainmote* and *Justice-Seat*; probably it is so called, because the Foresters and other Officers of the Forest brought in the Attachments, (*i. e.*) what Offenders against Vert and Venison they had attached, either by their Bodies or Goods, which Attachments, and likewise Presentments of Offences, the Verderors (who are Judges of this Court) ought to receive and enrol, that they may be presented or punished at the next *Justice Seat*.

This Court was formerly called the *Woodmote*, and since the Charter of the Forest 'tis called the *Forty Days Court*, for before that Time it was held at the Will and Pleasure of the Chief Officers of the Forest, which

B. 4

was

Attachment.

was so very often, that the People could not constantly attend; and thereupon several Fees were exacted to excuse their not appearing.

But now by this Charter it was limited to be kept every *Forty Days*, so that the Time being certain, the People knew when to attend, and to save their Amercements and Fees, which Amercements were formerly estreated to the chief Warden of the Forest, and levied by Distress.

This Court for the most Part is only a Court of Enquest, and being the most inferior of the three Courts, they cannot convict for above the Value of 4 *d.* for if the Trespass done in the Vert or Venison is above that Value, it must be enrolled in the Verderor's Roll, that it may be ready at the next Swainmote, to be tried and punished there, according to the Forest Laws.

Therefore a Presentment of an Offender in this Court is no Conviction, because he may traverse it, and try it at the Swainmote, for all Trespasses presented in this Court must be tried at the Swainmote, according to the Laws of the Forest,
before

Attachment.

9

before the Trespassers can be convicted and punished.

These Attachments as hath been observed, were formerly made by the Goods and Chattels of the Offender, and often by his *Body* ; but since the Charter no Man is to be attached *by his Body*, for any Trespass in Vert or Venison, unless he is taken in the very Fact within the Forest, for otherwise he must be attached by his Goods.

Badgers. See Fox.

Brakes. See Fern.

B 5

Cer

Certiorari.

THIS is a Writ issuing out of Chancery, directed to a Judge of an inferior Court, to remove the Proceedings there depending, which I mention here, because Notice is taken thereof in several Statutes concerning the Game; as for Instance, no *Certiorari* shall be allowed to remove any Conviction, or other Proceeding upon the Statute 3 & 4 *W.* c. 10. unless the Party convicted (before it be allowed) shall become bound to the Prosecutor in 50 *l.* with Sureties to be approved by the Justice, to pay within one Month after the Conviction confirmed, on a *Procedendo* granted, the full Costs to be ascertained on Oath.

The Preamble of this Statute takes Notice, that tho' there were many good Laws in Force to prohibit unlawful Courting of Deer, yet the Penalties thereby provided were not sufficient to deter disorderly Persons, &c.

Now

Certiorari.

11

Now this Statute was made against Persons unlawfully *coursing, hunting, taking in Toils, killing, wounding, or taking away* red or fallow Deer in any *Forest, Chase, Purlieu, Paddock, Wood, Park, or other Ground enclosed, where Deer are or shall be usually kept,* without the Consent of the Owner, or Person entrusted with the Custody thereof, or be aiding therein; the Forfeiture is 20 l. for *Coursing and Hunting,* and * 30 l. * By the for every Deer taken, wounded, or Statute killed, to be levied by Distress and 5 Geo. c. 15. 'tis 50 l. if the Offender is an Officer or Keeper of a Forest, Park, Purlieu, Paddock, Wood, or Place, &c.

By the Statute 5 Geo. no Certio- 5 G. c. 15. rari shall be allowed to remove any Conviction or Proceeding upon the aforesaid Statute 3 & 4 Will. unless the Party convicted shall at the Time the Security is given, according to that Statute, for the Payment of Costs and Damages to the Prosecutor, become also bound to the Justices before whom such Conviction was made, and

Certiorari.

and with such Sureties as they shall approve in the Sum of 60 *l.* to prosecute such *Certiorari* with Effect, and to pay to such Justices the Forfeitures due on the Conviction, and to render the Convicts to them within one Month after the Conviction confirmed, or a *Procedendo* granted; and in Default thereof, the Justices may proceed to the Execution of such Conviction, as if no *Certiorari* had been granted.

4 & 5 W.
c. 23.
The Preamble of this Statute is, that tho' there are good Laws for the Preservation of the Game, yet for want of due Execution of them, the Game hath been very much destroyed by idle Persons.

No *Certiorari* shall be allowed to remove any Conviction or Proceedings, concerning any Matter in the Statute 4 & 5 *W.* unless the Party convicted shall before the Allowance of the *Certiorari* become bound to the Prosecutor, in the Sum of 50 *l.* with Sureties, to be approved by the Justice or Justices, before whom such Offender was convicted to pay the Prosecutor his full Costs and Charges, to be ascertained upon Oath within a Month after such Conviction confirmed, or *Procedendo* granted.

This

This Statute was made against suspected Persons and not qualified, in whose Houses any *Venison* or *Skin* of Deer, or *Toils*, should be found upon Search ; and in Case any Game should be found, and the Party does not give the Justice a good Account how he came thereby, or produce the Party of whom he bought it, &c. or some credible Person, to make Oath of the Sale thereof, he shall be convicted, and forfeit for every *Hare*, *Partridge*, or other Game, not under 5 s. nor above 20 s. one Moiety to the Informer, and the other to the Poor.

The said Statute was likewise made against those who keep *Bows*, *Greyhounds*, *Setting-Dogs*, *Ferrets*, *Coney-Dogs*, *Hays*, *Lurchers*, *Nets*, *Tunnels*, *Lowbells*, *Hare-pipes*, *Snares*, or other *Instruments*, for the Destruction of the Game.

And against those who keep any *Net*, *Angle*, *Leap*, *Piche*, or other *Engine*, for taking Fish, &c.

If a *Certiorari* shall be allowed to 5 Annæ remove the Proceedings, upon the Sta- cap. 14.
tute 5 Annæ, the Party (before the Allowance) shall become bound to the Prosecutor in the Sum of 50 l. as
in

Certiorari.

in the Statute 4 & 5 *W.* before-mentioned.

This Statute was made against those *Higlers, Chapmen, Carriers, Innkeepers, Victuallers, or Alehouse-keepers*, in whose Custody any *Pheasant, Hare, Partridge, Moor, Heath Game* or *Growse*, shall be found.

And against Persons who shall *destroy, sell, or buy any Hare, Pheasant, Moor, Heath Game, or Growse*; and if he shall within three Months make Discovery of any *Higler, &c.* who hath *bought, sold, or offered*, or had the same in his Possession, so as one be convicted; the Discoverer shall be discharged of the Penalties, and receive the same Benefit as the Informer.

And against unqualified Persons who keep or use any *Greyhounds, Lurchers, Setting-Dogs, Tumblers*, or other *Engines* to destroy the Game.

And against those who cut *Ling, Heath, or Brakes*, in order to burn them to Ashes, or shall burn them to Ashes in the Forest of *Sherwood*, or any Waste or Land in the County of *Nottingham* without Licence, from the Owner of the Soil.

Law Cases.

Adjudged that a *Certiorari* shall *The King*
not be allowed to remove a Present-^{versus}
ment by any Forester, for selling *Maxis.*
Wood before Conviction at the Swain-^{2 Keb. 81.}
mote ; for if it should, then the
Courts of the Forest would be de-
prived of their Jurisdiction.

The Defendant was convicted for *The*
stealing Deer, and by Virtue of a *Queen*
Warrant, &c. a Distress was taken *ver. Nash.*
for the Forfeiture, and a *Certiorari* *1 Salk.*
was afterwards brought to remove *147.*
the Conviction into *B. R.* and after
the Record was removed, the Consta-
ble sold the Goods which he had
seised, and kept the Money, and
would not return the Warrant, &c.
and it was held, that the Constable
might proceed in the Execution of
the Warrant after the *Certiorari* was
allowed, because it was begun be-
fore ; and that the Writ was no more
a *Supersedeas*, than a Writ of Error
was to stay an Execution upon a
Fieri facias already begun ; and that
the Court had no Power over this
Warrant, because it was granted be-
fore the *Certiorari* issued ; therefore
they

Certiorari. Chase.

they would make no Rule on the Constable to return the Warrant, but said the Justices might fine him if he did not make a Return, or pay the Money to the Prosecutor.

Chase.

Chase is derived from the *French Chasser*, which signifies to chase, &c. this is a privileged Place for Deer and wild Beasts, and 'tis of a middle Nature between a *Forest* and a *Park*, for 'tis less than a Forest, and hath not so many Officers, Laws and Courts, but it is larger than a Park, and hath more Officers and Game; and it differs from a Park, because 'tis enclosed, but yet like a Forest, it must have certain Metes and Bounds.

9 G. c. 21. Armed and disguised, and appearing in any Chase where Deer are kept; this is Felony without Benefit of Clergy.

Law Cafes.

'Tis not lawful for any Man to make a Chafe without a Licence under the King's Seal, because 'tis in some Measure to appropriate to his own Use such Beasts which are *feræ naturæ*, in which no Man can have a Property ; but when once 'tis made a Chafe, 'tis governed by the * Common Law, and not by the ^{* 4 Inst.} Laws of the Forest ; for a Chafe is ³¹⁴ not a Forest, though every Forest is a Chafe.

Therefore where the King granted a Forest to another in Fee, yet the Grantee had no Forest, because he had no Authority to make a *Chief Justice in Eyre*, and other Officers of the Forest to hold Courts ; but though he could not take it as a Forest, yet that and the Game shall pass as a free Chafe.

It differs likewise from a *Forest*, because it may be in the Hands of a Subject, which a Forest cannot in its proper Nature ; but yet it may be granted in so large a Manner to a Subject, as that there may be a *Court of Attachment*, *Swainmote*, and a Court

a Court equivalent to a *Justice-Seat*.

W. Jones 278. A Grant may be made to one to have a *Chafe* in a *Forest*; but yet in such Case the Grantee ought not to hunt or kill any Stag or red Deer, or other Beast of the *Forest*, if he doth 'tis an Offence, and finable.

1 Inst. 233. My Lord Coke in his 1 *Inst.* tells us, that Beasts of the *Chafe* extend to *Buck, Doe, Fox* and *Roe*; but in a common and legal Sense to all Beasts of *Forest*.

12 Rep. 22. Where a Man hath a Freehold in a free *Chafe*, he may cut down Timber without View, or Licence of any Person, which he cannot do in a *Forest*; but if he cut such a Quantity that there is not enough left for *Covert*, and to maintain the Game, he shall be punished at the King's Suit; so if he hath a *Chafe* in another Man's Soil, the Owner cannot destroy all the *Covert*, but must leave sufficient for the Deer to browse.

2 Cro. 22. Such Owner of the Soil where there is a *Chafe*, may have *Common* for his *Sheep*, and Feeding for his *Cornies* there, and this either by Grant or Prescription; but he must not surcharge it with more than hath been usual

Common in a Forest.

19

usual to depasture there, neither can he make any new Coney-Burrows.

Common in a Forest.

Adjudged, that a Man may pre- Trigg v.
scribe to have Common in a Forest Turner.
at all Times in the Year, without ex- 3 Lev. 98.
cepting the *Fence-Month*, which is 15 Brai-
Days before St. *Swithin*, and 15 broke v.
Days after, that being the Time 7 Lev.
when the Does fawn; and that such 127. S. P.
Prescription is good for Common for
Sheep.

My Lord Coke tells us in his 4 *Inst.* 4 *Inst.*
that a Man may have Common by 298.
Prescription for *Sheep* in the King's
free Chases, and that it was so re-
solved by all the Judges of *England*;
and he tells us his own Opinion, that
a Man might have the like Prescrip-
tion for *Common of Sheep* in the King's
Forest; for tho' by the Laws of the
Forest, *Sheep* are not commonable
there, because they bite so close to
the Ground, that they may starve
the Deer; yet since most of the Sta-
tutes concerning Forests are declara-
tive *antiqui juris*; therefore a Man
may prescribe against them, as well
as

Common in a Forest.

as he may against the *Common Law*, upon a just and reasonable Cause, and such a Prescription may have a lawful Beginning by the Grant of the King ; but where the *Prescription* is for all commonable Cattle, 'tis certainly good ; for there by the Word *Commonable* 'tis restrained, and by the Laws of the Forest *Sheep are not* commonable in a Forest, for the Reason before-mentioned ; and if a Man had prescribed for Common in a Forest *pro omnibus Averiis*, that would have been good, though by the Word *Averiis* Sheep are comprehended.

W. Jones
285.

Hardres
87.

But yet there seems to be a contrary Resolution in *Hardres*, where in a special Verdict in Ejectment, it was held that a *Prescription for Common* of Pasture in a Forest for all Cattle and Swine at all Times in the Year was held ill.

Webb's
Case.
1 Roll.
Rep. 411.
3 Bulst.
230. S. C.

In *Webb's Case* it was admitted, that a Man might commit a Trespass in a Forest by his *Sheep* ; and accordingly *Webb* was fined by the Chief Justice in Eyre at a Justice-Seat, and committed for not paying the Fine ; and all this Matter appearing upon the Return of an *Habeas Corpus*, the Question was, whether

ther the Commitment for not paying the Fine was lawful ; for the Court held, that if it was lawful, he could not be bailed, because he was committed by the *Chief Justice in Eyre*, and therefore they would advise upon that Point ; but an Objection was made to the Return of the *Habeas Corpus*, (*viz.*) that the Trespass was committed within the *Doles* of the Forest ; the Court held, that shall be intended within the Bounds, but more properly within a Part or Portion of the Forest, the Word being derived from the *Saxon Doel*, which signifies Part of a Thing or Place.

Common of Pasture was claimed in *Windsor Forest* by Prescription for all Cattle commonable.

Dean and Chapter of Salisbury's Case.
W. Jones
282.

Mr. Attorney Noy at a Justice-Seat affirmed, that this Right of Common ought to be tried by the Officers of the Forest, whether those who make this Claim, use *Staffherding*, (*i. e.*) to have a Man follow their Cattle ; for if they did, 'tis not allowable of Common Right, because the Deer are frightened by the Person who follows the Cattle, so that they will not feed amongst them ; besides,

the

Common in a Forest.

the *Staffherder* will drive the Cattle into the best Places in the Forest, so that after they have depastured there, little will remain for the Deer ; and for this Offence, the Common may be seised till the Commoner pays a Fine.

Jennings
v. Rock. Poph. 93. Adjudged, that where a Man hath Common in a Forest, which is afterwards disforested, that he shall still have Common on the same Land.

The King v. Inhabitants of Rodley. Hardres 437. This Point came in Question again some Years afterwards, (*viz.*) The Inhabitants of *Rodley* claimed Common by Prescription in the Forest of *Sherwood* in certain Lands there lately enclosed by them, to whom the King granted those Lands ; which being now disforested, the Question was, whether the Common was lost, and this depended upon the Construction of the *Charter of the Forest*, and the *Ordinance of the Forest*, (which is a Statute made in the 33^d Year of *Ed. 1.*) by the one 'tis provided in the very first Article, *That where the King had made a Forest of his own Lands, the same shall remain a Forest still ; but with a Saving of the Common of Herbage to them who had a Right before it was*
a Fo-

Ordinatio
forestæ
Anno 33
Ed. 1.

a Forest ; and by the Ordinance of the Forest 'tis provided, that those, to whom the King had granted Purlieus, by Reason whereof their Woods were disforested, should be quit of the Charge of the Forest, but then they are to have no Common there ; howbeit, those who were willing to return their Woods into the Forest shall enjoy Common, and other Easements there, as they did before.

Now in arguing this Point, the Lord Chief Baron Hale said, there were three Sorts of Forests, (*viz.*) Ancient Forests before the Charter, new Forests made by *Hen. 2. Rich. 1.* and King *John*, and a third Sort of Forests, which might be termed partly old and partly new, because the antient Bounds of the old Forests were enlarged by taking in Lands, which were never in the Forest before ; therefore, where in the 9th Year of *Hen. 3.* those Lands were disforested by the Charter, there was a Saving of the Right of Common in the Forest, to those who had been accustomed to have it ; the Meaning whereof is, that the Lands of several Persons had been wrongfully taken into the Forests, in the Reigns of

Common in a Forest.

of *Hen. 2. Rich. 1. and King John*, and added to their new Forests, in Prejudice to those who before that Time might have Right in Common in those Lands; therefore it was but reasonable when those Lands were disforested, that the People should enjoy the same Right of Common as they did before.

Afterwards by a Perambulation made *Anno 12. H. 3.* many Forests were again enlarged to the Prejudice of the Owners of the Lands; and by another Perambulation made *Anno 28 Ed. 1.* other Lands were found to be exempted out of the Forests, which in former Days were Forest Lands; and this was prejudicial to the King.

Now upon these Grievances on both Sides, *the Ordinance of the Forest* was made; the Purport whereof is, that the Disforestations which were found by this last Perambulation should stand, whether right or wrong, and that the Lands disforested should be discharged from the Laws of the Forest, but then the Owners were not to have Common there, unless they restored their Lands to the Forest again; but if they were
duly

Common in a forest.

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duly afforested at first, and afterwards wrongfully disforested by that Perambulation, then if they would have them still continue disforested by Virtue of this *Ordinance*, the Common was lost.

Besides, this Ordinance of the Forest made only a temporary Suspension of the Common, (*viz.*) so long as the Land should continue disforested; and now by a late * Statute, * 17 Car. I. c. 16. it can never be afforested again.

The Inhabitants of *Egham*, and *Inhabitants of* all the Towns in *Surry* within *Windsor Forest*, joined in a Claim by *Haley's Case.* Prescription to have Common there *W. Jones* for all commonable Cattle, and likewise Common of *Turbary*; and it was held at the Justice-Seat, they could not all join in one Claim; 'tis true, Tenants in *antient Demesne* may join in a Claim for Common, and so may a Lord of a Manor for himself and his Copyhold Tenants, because the Freehold of their Lands is in him; but *Inhabitants* by that Name cannot prescribe for a *Profit appendre*, though they may for an *Easement*, as for a *Way* to the Church; therefore in the principal *Gate-ward's Case.* *6 Rep. 60.*

C Case,

Common in a Forest.

Case, the Inhabitants were amerced
pro falso clamore at the Justice-Seat.

12 Rep.

22.

2 Cro. 22.

The Owner of the Soil in a Chase may have Common for his Sheep, and Feeding for his Conies there, either by Grant or Prescription; but he must not surcharge it with more than hath been usually there, neither can he make any new Coney-Burrows.

A Declaration in Trespass brought by the Plaintiff, who had Right of Common, &c. against the Defendant, for making Coney-Burrows.

Wilts. ff. **T**. S. nuper de H. in Com' præd' Yeoman attachiatus fuit ad respondend' J. H. de H. prædict. gen' de placito quare cum idem J. secundo die Januarii Anno, &c. seistus fuit & adhuc seistus existit de uno messuagio cum pertin' in H. prædict' in dominico suo ut de feodo Cumque etiam idem J. & omnes illi quorum statum idem J. ad tunc habuit & adhuc habet in messuagio prædict' cum pertinen' a tempore
cujus

cujus contrarii memoria hominum non
 existit habuerunt & habere consue-
 verunt pro se firmariis & tenentibus
 suis messuagii præd' cum pertinen'
 communiam pasturæ pro omnibus ave-
 riis suis super tenementa prædict' le-
 van' & cuban' in ducentis Acris pa-
 sturæ vocat' H. Common in H. præd'
 omni tempore Anni tanquam ad te-
 nementa prædict' pertinen' Cumque eti-
 am 6 die Januarii Anno regni, &c. Conies
 quidam Cuniculi in prædict' ducentis bred
 acris pasturæ vocat' H. Common gene- there,
 rare (Anglice, to breed) inceperunt and made
 & diversa Cava (Anglice, Holes) in Coney-
 eisdem ducentis Acris pasturæ fece- Burrows.
 runt, & prædict' T. præmissa satis
 sciens & malitiose machinans eundem
 J. non solum de communia pasturæ
 suæ prædict' de & in eisdem ducentis
 acris prædict' exhereditare verum e-
 tiam ipsum J. de proficuo Communie
 suæ prædict' cum averiis suis præ-
 dict' in forma prædict' percipiend'
 & habend' deprivare & frustare po-
 stea scilt' duodecimo die Januarii An- And the
 no, &c. apud H. præd' pro meliori Defen-
 præservatione cuniculorum prædict' dant built
 in prædict' ducentis acris pasturæ a Lodge
 nerare & fatare incipien' for his
 domum vocat' a Lodge, pro hospita- Servants-
 tione them.

Common in a Forest.

tionem (Anglice, the Lodging) ipsius T. & servien' suorum in eadem domo ad cuniculos illos sic ibidem genera' & fetan' melius praeservand' supervidend' & tutius custodiend' in eisdem ducentis acris erexit & fecit & quadam Latibula (Anglice, Coney-Burrows) in diversis partibus earundem ducentarum acrarum pasturae pro nutritione cuniculorum & Lauricium (Anglice, Rabbits) in & super easdem ducent' Acras pasturae ut praefertur fectare & generare incipien' fecit & erexit & fieri & erigi causavit & ramos in fundo in & circa Cava praedicta per Cuniculos praedict' ut praefertur fact' & effossa adtunc locavit & posuit & decem tendiculas (Anlice, Traps to catch Vermin) in eisdem ducentis Acris pasturae fixit locavit & posuit & solum in diversis partibus earundem ducent' acrarum pasturae scidit & cum terra inde ripas ibidem fecit & sepículas (Anglice, small Hedges) in per & super ripas illas posuit & locavit & ratione inde Cuniculi praedict' sic in praedict' ducentis acris pasturae generare & fectare sic ut praefertur incipien' inter eundem duodecimum diem Januarii & diem impetrationis hujus brevis multipliciter genera' & fecti-

And made Coney-Burrows.
 And put Boughs over the Coney-Burrows.
 And set Traps to kill Vermin.
 By this Means the Conies encreased.

fætificaverunt & Cuniculi illi sic aucti-
tat' (Anglice, encreased) nonnulla ca-
va in diversis partibus earundem du-
centarum acrarum pasturæ pro eorun-
dem generatione & fætificatione fode-
runt & fecerunt ac herbam in eisdem And eat up the
ducentis acris pasturæ cum pertin' cres- Grass.
cen' magnopere in dies depast' fuerunt
& consumpser' sic quod idem J. per e-
rectionem domus prædict' & factionem
& fossionem latibulorum & cavorum
prædict' & positionem & locationem
tendicularum prædict' ac factionem
riparum necnon consumption' herbarum
prædict' in prædict' ducentis acris By rea-
pasturæ profic' Communia pasturæ son
sua prædict' per tempus prædict' ha- whereof
bend' & percipiend' capere gaudere the Plain-
& uti non potuit nec adhuc potest riff lost
in magnum præjudicium ipsius J. ac in his Com-
exhæreditation' suam manifestam ac mon.
in deprivationem ejusdem J. de Com-
munia sua prædict' ad damnum ip-
sius J. viginti librarum & inde pro-
ducit sectam.

Conies. See the Warren.

Fuller's
Worthies
246.

Conies, by some called Rabbits, are an Army of natural Pioneers, who thrive best in barren Land, and are fattest in the hardest Frosts, and then their Flesh is very wholesome, and for that Reason there are several Statutes made to preserve them from Destruction by Persons not qualified; the first is 13 R. 2. by which 'tis enacted, that Conies shall not be destroyed by a Layman, who hath not Lands worth 40 s. per Ann. nor by a Clerk who hath not 10 l. Revenue per Ann. on Pain of a whole Year's Imprisonment, which Justices of Peace shall have Power to inflict.

13 Ric. 2. first is 13 R. 2. by which 'tis enacted, that Conies shall not be destroyed by a Layman, who hath not Lands worth 40 s. per Ann. nor by a Clerk who hath not 10 l. Revenue per Ann. on Pain of a whole Year's Imprisonment, which Justices of Peace shall have Power to inflict.

13. The Preamble is, that Artificers, Labourers, Servants and Grooms, keep Greyhounds, and other Dogs, and go hunting in Parks, Warrens, &c. on Holydays, when good Christians are at Church.

3 Jac. 1. Wrongfully entring into a Park or enclosed Ground, used for breeding Conies, hunting, driving, taking, chasing, or killing them without Authority, shall pay treble Damages and Costs to the Party grieved, and be committed for three Months, and find Sureties for his good Behaviour for seven Years.

Ano-

Another Statute was made Anno 22 Car. 2. by which it is enacted, 22 & 23 That he who wrongfully enters into a Ground kept for breeding of Conies, and shall chase or kill any of them, and being convicted thereof, shall forfeit to the Poor of the Parish not exceeding 10 s. as the Justice shall appoint; and if not paid, shall be sent to the House of Correction not exceeding one Month.

Car. 2.
c. 25.
The Preamble of the Stat.
3 Jac. recites, that since the Statute 5 Eliz. cap. 21. several

Grounds have been enclosed, and kept to preserve Deer, Conies, &c. and that neither by that Act, or any other then in Force, a sufficient Remedy was provided against ill Persons, who should chase, hunt, or kill any Deer or Conies within such enclosed Ground; therefore it was enacted, that he who shall wrongfully enter, &c.

And the Statute 22 & 23 Car. 2. recites, that several disorderly Persons neglecting their lawful Trades and Employments, did take, kill, and steal Conies, &c.

Law Cases.

If a Man should make Coney-Burrows in his own Ground, and put in Conies, and they encrease so fast that they run into his Neighbour's Ground and destroy his Grass, it hath been a Question whether he may kill them; * Boulston's Case that he might, and the Reason there given is, because they are fera

natura ; but a better Reason is, because a Man hath a Property in them *ratione loci*, when they are on his own Land ; and therefore he may justify the killing them.

Coney's
Case.

Godb.

122.

4 Leon.

S. C.

By the
Name of
Ould v.
Lucy.

2 Leon.

201. S. C.

But 'tis otherwise if they are killed by him who hath a *Right of Common* only ; as for Instance, In Trespas for digging his Close and killing eighteen Conies, the Defendant pleaded Not guilty as to all the Trespas besides the Killing eighteen Conies ; and as to them he pleaded, that the Place where, &c. was a great Heath in which he had Common of Pasture, and that he found those Conies eating the Grass there, and so justified the Killing them, &c. Adjudged, that though Conies are *fera natura*, yet when they are on the Lands of another, he hath a Property in them by Reason of the Possession, and therefore an Action lies either for killing or taking them ; therefore in this Case, the Conies being on the Land of the Plaintiff, who had the Inheritance thereof, and the Defendant having only a Right of Common on those Lands, he might have an Action on the Case, but could not justify the Killing them.

'Tis

'Tis true there is a Case in *Cro. Hilfley v. Car.* were it was otherwise resolved. *Wilkinson.*

Cro. Car.

387. W. Jones 356. S. C.

§. The Plaintiff brought an Action on the Case against the Defendant, for that he (the Defendant) having a Wood adjoining to a Common where the Plaintiff and other Copyholders of the Manor of *H.* had Right of Common, the Defendant kept Conies in his Wood, which ran out into the Common, and eat up the Grass, &c. Adjudged, that the Action did not lie, because when the Conies were out of the Wood, the Defendant had no Property in them, and the Plaintiff could be at no Inconvenience, for he *might kill them*; which is very true, if they had been *on his own Land*, but he had only a Right of Common there.

And so are the Authorities both Bellow before and after that Case, (*viz.*) In *v. Langden.* Trespass for breaking and entring his Close, and killing his Conies, the Defendant justified and prescribed for Common in the Place where the Trespass was supposed to be done, as appertaining to his Messuage in *H.*

Cro. El.
876.

Owen
114. S. C.

and because the Conies were feeding on his Common he killed them ; and upon a Demurrer to this Plea it was insisted for the Defendant, that he might *justify the Killing them*, because he had no other Remedy, as he might justify killing Foxes, or any other Vermin ; but adjudged, that he could not *justify the Killing of Conies*, because the Owner of the Soil where they are feeding hath a possessory Property in them against all People when they are there ; and the Commoner hath no Manner of Right in the Soil it self, for he is only to take his Common, and may bring an Action against him who disturbs him ; besides, Conies are Beasts of Warren and profitable Beasts, and therefore are not to be compared with Vermin, and the keeping of them is lawful, and the killing them by the Commoner unlawful.

Hoddes-
den v.
Griffel.
2 Cro.
195.

So in Trespass for breaking his Close, *nechan liberam Warrenam intravit*, and for taking and carrying

Palm. 368. S. C. Yel. 44, 143. S. C. 2 Bulst. 110. S. C. Brownl 208. S. C. Winch. 16. S. C. Bridgm. 10. S. C. W. Jones 12. S. C. by the Name of Griffel v. Leigh.

away

away so many Conies; the Defendant justified; for that he was seised of a Messuage and Lands in, &c. and prescribed to have Common in the Place where the Trespass was supposed to be done, and that he was there ready to use his Common, and then sets forth, that many Conies were there Damage feasant, thereupon he entred and chased them out; and upon a Demurrer this was adjudged an ill Plea, because the Plaintiff being only a *Commoner*, hath no Interest in the Land; he is only to take his Common, but cannot prescribe against the Lord, for as he may have great Beasts there, so he may have Beasts of Warren, and the *Commoner* cannot destroy them.

See 1
Brownl.
227.
Lawley
v Park.
S. P.

Upon a Demurrer the Question was, whether a Man who hath Right of Common might destroy the Conies feeding on the Land; and fill up the Coney-Burrows in the waste Ground; and adjudged that he could not, because he hath no Interest in the Soil, other than to take the Common by feeding his Cattle there; and therefore must not fill up the Burrows, nor destroy the Conies.

Horsey v.
Heybur-
ton.
2 Cro.
229.

So

Samborn v. Harri-
low.
Sandford.
v. Howell
Bridgm.
21.
Godb.
184.

So in Trespass for hunting three hundred Conies, with a *Continuando* from such a Day to such a Day ; the Defendant justified, for that he had Right of Common in the Place where, &c. for 240 Sheep, as to his Messuage in *H.* appertaining, and that he and all those whose Estate he had therein, &c. have used when, and at such Time as the Common was surcharged with Conies, to hunt, kill, and carry them away, *as to his said Messuage belonging, &c.* And upon a Demurrer to this Plea, it was adjudged that the Prescription was void, for as a Man cannot prescribe in the Freehold of another, so he cannot prescribe to hunt, and kill Conies, *as to his Messuage belonging.*

Haffard v.
Cantrel.
1 Lutw.
107.
Abridg. of
Lutw. 37.

Case, &c. wherein the Plaintiff made a Title under Coparceners, and prescribed in them to have a Right of Common in *Hartshorn*, as appurtenant to his Messuage there ; and that the Defendant had made a Warren in the Common and Coney-Burrows, and put in Conies, &c. by Reason whereof he could not enjoy his Common so beneficially as before ; the Defendant prescribed to have a free

free Warren within the Manor of H. and so justified the making Coney-Burrows, and putting in Conies, &c. and averred, that the Plaintiff had sufficient Common; the Plaintiff replied and maintained his Declaration, and traversed the Sufficiency of the Common, and the Defendant's Prescription to a free Warren; and upon a Demurrer to this Replication it was objected against the Plea, that the Lord of the Soil could not make Coney-Burrows, and put in Conies there to the Prejudice of the Defendant, who hath Right of Common, so that he could not enjoy the Benefit thereof; but the Plaintiff had Judgment, by which it appears the Lord might do it; but that if the Conies multiply so fast, that the Plaintiff could not enjoy his Common, he might have an * Action on the Case against the Lord.

In Trespass for breaking his Close and hunting there, and killing *Centum Cuniculos* † *suos*, &c. upon Not guilty pleaded the Plaintiff had a Verdict and entire Damages; and it was moved in Arrest of Judgment, that the Declaration was not good, because the Plaintiff could not have

* See the Form of the Declaration in Title Common in a Forest.

Sutton v. Moody.

2 Salk.

556.

† Newton v. Richards.

Godb.

174. S. P.

any

any Property in the Conies; and therefore could not call them *suos*, as he did in his Declaration, because they are *fera natura*, and by Consequence *nullius in Bonis*; 'tis true if he had a Warren, then an Action *quare Warrenam fregit & Cuniculos suos cepit* might be well enough; but adjudged, that a Warren is only a Franchise to keep the Conies, and the Owner of such Warren hath no greater a Property in them in the Warren, then any other Man hath, when they are on his Lands; now in the principal Case the Conies being on the Plaintiff's Lands, he hath a local Property in them whilst they are there, and no body can justify the Killing them.

Moyle v. In an Action of Waste against the
 Moyle. Lessee of a Warren, the Waste as-
 Owen 66. signed was, *Stopping Coney-Burrows*:
 Adjudged, that the Action would not
 lie, because a Man cannot have the
Inheritance of Conies, nor any Pro-
 perty in them, but only the Posses-
 sion; 'tis true an Action will lie a-
 gainst him who makes Holes in the
 Land, but not against him who stops
 them up, because the Land is better
 by making it plain.

'Tis

Conies. Crows.

39.

'Tis not Felony to take Conies in a Warren or in a Park, because they are *fera naturæ*, and the Owner of such Places hath not an absolute Property in them, but only *ratione loci*; yet when Conies are reduced to a Tameness, he who steals them knowing them to be tame, is guilty of Felony.

Cony-Dogs. See Tit. Dogs.

Crows.

There is a Statute made in the 24 H. 8. Reign of H. 8. for the Destruction of ^{cap. 10.} Crows, &c. by which 'tis enacted, that every Person as well spiritual as temporal, having any Manors, Lands, or Tenements in their Manurance or Occupation, shall do or cause to be done, as much as reasonably they can, to kill or destroy all Choughs, Crows and Rooks, coming, abiding, or breeding on their Lands; and in Default thereof to be amerced, it being presented before a Steward of a Leet, who with two of the Presenters (to be named by the said Steward and Presenters) shall assess and set an Am-
merce-

Crows.

mercement for every Default, such as to them shall seem reasonable to be levied by Distress and Sale, &c. as other common Annoyances presented at the Leet have been accustomed to be levied, to the Use of the Lord of the Leet, where the said Default was made and presented.

But if such Presentment shall be made at the Sheriff's Turn, or at the Sessions, then the Steward of the Törn, with two Presenters, as afore-said; or if it is at the Sessions, then the said Sessions or two Justices shall assess and set the Amercement to be had and levied to the Use of the King.

The Defaults, &c. shall be given in Charge at the Leet, and at the Sessions; and any Man may with Leave of the Owner of the Ground, enter, kill, and take Rooks, Crows, &c.

And every Farmer or Owner of Lands of the yearly Value of 5 *l.* shall pay 2 *d.* to any Person, who at his own Costs hath killed 12 old Crows, Rooks, or Choughs, in or upon his Lands, the same being brought and offered to such Farmer, and so in Proportion for a greater or lesser

lesser Number ; and upon Refusal to pay the Money, then any Justice, &c. or high Constable, upon Complaint to them made, shall cause the same to be levied by Distress and Sale, &c.

But no Person by Colour of this Statute shall take or kill any Doves or Pidgeons.

All the rest of this Act is repealed by the Statute 8 *Eliz. cap. 15.* and the other Part which was revived being only temporary, is long since expired, so that I only mention this Statute to shew how careful our Ancestors were to preserve their Corn, when newly sown and ripe, from such Vermin, and especially since there have been some Attempts to destroy this Sort of Game by Hawking.

Deer.

Deer.

19 H. 7. cap. 11. *The Preamble recites, that the greatest Destruction of red and fallow Deer is with Nets called Deer-Hays, and Buckstalls, and by stalking with Beasts.*

HE who keeps Deer-Hays, or Buckstalls, except in his own Park, forfeits 40 s. per Month, and to be committed till 'tis paid; the Justices to have the tenth Part.

Two Justices may examine the Offender and commit him.

He who *stalks* to any Deer with Bush or Beast, except in his own Park or Ground, forfeits 10 l. for every Offence, if done without Licence of the Owner, &c.

5 Eliz. cap. 21. 3 Jac. 1. cap. 13. *Both these Statutes are expired.*

*Hunting, driving, chasing out, taking, killing, or fleaing any Deer by unlawful entring into any Wood, Park or Ground enclosed, and used to cherish or breed Deer, forfeits * treble Damages to the Party grieved, and to be committed for three Months; and after the Expiration thereof, shall*

** To be recovered in any Court of Record.*

shall find Sureties for his good Behaviour for seven Years.

This Act not to extend to any Park, or enclosed Ground used for Deer, without a Grant from the Crown.

Upon Satisfaction of the treble Damages, the Party grieved may release the Surety of the good Behaviour, at any Time within the seven Years.

The * Sessions may hear and de- * *And so*
termine this Offence; and if the Of- *may the*
fender confesses it, and satisfies the *Justices*
Party according to the Act, they may *of Assise.*
discharge the said Offender and Suretyship.

And an Action was brought on Onyon's
this Statute for chasing his Deer, and *Case.*
the Plaintiff had a Verdict and tre- *4 Leon.*
ble Damages, which are given by the *36.*
Statute; yet it was ruled, that he
should likewise have *Costs.*

Selling or buying a Deer to sell *1 Jac.*
forfeits 40 s. to the Poor and the In- *c. 27.*
former, Conviction to be by one Wit-
ness before two Justices.

The Offences by the Statute 3
Jac. 1. cap. 13. are the same as by
the Statute 5 *Eliz. cap. 21.* this last
Act extending only to Deer in Parks

or

or enclosed Ground for keeping Deer; but the Statute 3 *Jac.* extends as well to Conies as to Deer.

13 Car. 2. cap. 10. By the Statute 13 Car. 2. not only coursing and killing, but hunting or taking away any red or fallow Deer in any Forest, Chase, Purlieu, Park, Paddock, Wood, or other Ground, where Deer are usually kept without Consent, &c. or shall be

*-See postea in this Title.

* *aiding and assisting therein*; and being convicted by Confession, or by one Witness before one Justice, being prosecuted within six Months after the Offence, forfeits 20 *l.* for every Offence, to be levied by Distress and Sale, &c. by *Warrant from the Justice before whom convicted*; one Moiety to the Informer, the other to the Owner of the Deer; and for want of Distress, either to be sent to the House of Correction for six Months, and there to be kept to hard Labour, or to be committed to the Common Gaol for a Year *without Bail*, at the Discretion of the Justice, and not to be discharged till he give good Security for his good Behaviour for one Year.

Law Cases.

The Defendant was convicted up- *The King*
on the Statute 13 Car. 2. and imme- *v. Whit-*
diately brought a Writ of Error, and *more.*
moved to be bailed till the Error was *Sid. 286.*
determined; but it was denied, be- *The King*
cause he was in Execution for a Fine; *v. Mar-*
and thereupon he was committed to *shall.*
the *Marshalsea*; and there being ano- *Sid. 320.*
ther Indictment against him at the *S. P.*
Sessions for Deer-stealing, to which
he pleaded Not guilty, it was ruled
upon a Motion, that it should be re-
moved and tried in the Court of
King's Bench. One *Stirt* was con-
victed upon the said Statute, and a
Warrant being made to levy the Pe-
nalty of 20 *l.* by Distress and Sale of
his Goods; the Defendant to whom
the said Warrant was directed, re-
fused to execute it; whereupon he
was indicted, which being removed
by *Certiorari*, it was objected, that
it did not appear *where the Warrant*
was made, or that it was made by
the same Justice before whom the Par-
ty was convicted, (which is expressly
required by the Statute) besides the
Indictment was insufficient, it being
pro

pro injustâ Venatione, &c. which is not good upon this Statute without *killing the Deer*: The Indictment was quashed.

Gawdy v.
Felton.
1 Keb.
813.
See Postea
the King
v. Speed
contra.

A Conviction upon this Statute was removed by *Certiorari* into *B. R.* but it was moved that it might not be filed, because if the Court should be possessed of the Cause, they cannot punish the Offender; for the Statute appoints the Execution to be by Distress and Sale, by Virtue of a Warrant made by the Justice before whom the Party was convicted; and because a Writ of Error doth not lie upon such a Conviction, therefore a *Procedendo* was granted.

3 & 4 W.
cap. 10.
This Sta-
tute was
made to
encrease
the Penal-
ties.

Unlawfully Courting or Hunting any red or fallow Deer in any Forest, Chase, Purlieu, Paddock, Wood, Park, or other Ground enclosed where Deer are kept, without Consent of the Owner, or Person chiefly entrusted with the Custody thereof, or shall be aiding or assisting therein; and being convicted by Confession, or Oath of one Witness, before one Justice of the County where the Offence was committed, or the Party apprehended and prosecuted within * 12 Months, forfeits 20 l.

* Within
three Years
per Stat.
9 Geo.
c. 22.

Un-

Unlawfully wounding, taking in Toils, or killing such Deer, forfeits for every Deer so wounded, taken in Toils, or killed, 30 *l.* to be levied by Distress and Sale, by Warrant from a Justice *before whom convicted*; one Third to the Informer, another Third to the Poor, &c. the other Third to the Owner of the Deer; and for want of Distress to be committed for a Year without Bail, and to be set in the Pillory for an Hour on some Market-Day, in the next Town to the Place where the Offence was done.

Officers by Virtue of a Warrant of one Justice may search as for stolen Goods; and if any *Venison or Skin of any Deer or Toil* shall be found, if the Person, in whose Possession it shall be found, do not give a satisfactory Account to a Justice how he came by it, or in some convenient Time (to be set by the Justice) produce the Person of whom he bought it, or some credible Witness to attest the Sale, he shall be convicted and subject to the Forfeitures and Pains, as for killing one Deer.

And after Conviction, either the Officer or Prosecutor may detain the Offender in Custody, till a Return made of the Warrant for distraining, so as such Detainer do not exceed two Days.

— The King
v. Peck-
ham.
5 Mod.
524.

The Defendant was convicted on an Information on this Statute for *stealing a Deer*, which being removed by *Certiorari* into *B. R.* it was objected that the Information was not pursuant to the Statute; for that requires the Prosecution to be made within 12 Months after the Offence; which was not done in this Case; for it appeared, that the Fact was done on the 14th Day of *August 7 Will.* and the Information was brought on the 13th Day of *August following*; besides an Information is not properly a Prosecution; but adjudged, that the Record setting forth, that the Defendant *debito modo & secundum formam statuti convictus fuit*, 'tis well enough.

1 Salk.
381.

The Defendant was indicted on the said Act for Deer-stealing, and the Exception to it was, that it did not appear *in what Year or on what Day* the Deer was killed; then as to the Form

Form of the Indictment, it was objected, that it did not appear how, or in what Manner he was convicted, either by *Confession* or by *Witness*, as the Statute requires ; but it was answered and so adjudged, that if the Deer was killed within a Year before the Indictment, it was sufficient, and that the Indictment was good, tho' it did not appear in what Manner the Defendant was convicted.

Another was convicted upon this Statute for Deer-stealing ; but upon a Motion the Indictment was quashed, because it did not set forth that the Deer was taken in a *Place enclosed where Deer are kept*. Mich. 9 Will. *The King v. Pennoyer.*

After a Conviction on the said Statute 3 & 4 Will. is confirmed by any superiour Court ; then upon the Delivery of the Rule to the Justice by which the Conviction was confirmed, he may proceed as if a *Procedendo* had been granted. 5 G. c. 15. *concerning the Stat. 4 & 5 W.*

And any Person sued for what he did in Pursuance of the said Statute 3 & 4 Will. or of the Act 5 Geor. may plead the general Issue, and give the special Matter in Evidence ; and if the Defendant hath a Verdict, or the Plaintiff is nonsuit, the Defendant

dant shall have treble Costs, and the like Remedy to recover them at Law, as the Defendant hath in any other Case.

The Person convicted upon the Statute 3 & 4 *Will.* shall, before he is discharged out of Custody, be bound to the Party grieved in 50 *l.* with Condition to be of the good Behaviour, and not to offend in the like Manner; and if he refuse to give such Bond, he shall be committed to the Gaol till he doth; and if after such Bond given, he shall be again convicted for any Matter in that Statute 3 & 4 *Will.* the Bond shall be forfeited, and the Penalty with Costs shall be recovered in any Court at *Westminster*, and distributed in the same Manner as the Forfeitures are by that Statute; and the Party convicted shall be likewise liable to the Pains and Forfeitures in the said Act.

If a *Keeper, or other Officer of any Forest, Chase, Purlicu, Paddock, Wood, Park, or Place where Deer are kept*, shall be convicted on the said Statute, of killing or taking away any Deer, or of *aiding or assisting therein*, without the Consent of the Owner, or Person chiefly entrusted with

with the Custody thereof, such Keeper or other Officer shall forfeit 50 l. for each Deer so killed or taken away, to be levied by Distress, &c. and distributed as the Forfeitures in the said Act; and for want of Distress shall be committed for three Years, and be set in the Pillory two Hours on some Market-Day, in the next adjoining Town to the Place where the Offence was committed.

Entering into any *Park, Paddock*, 5 G. c. 28. or other enclosed Ground where Deer are kept, and wilfully killing any Deer there without Authority, or shall be aiding or assisting therein, and being indicted for the same, and convicted before a Judge of Assize, shall be sent to the Plantations for seven Years; and the Court may make an Order to transfer such Person to the Use of him who shall contract for the Performance of the Transportation.

Any Person *armed and disguised*, and 9 G. c. 22. appearing in any enclosed Ground where Deer are kept, or unlawfully and wilfully hunting, wounding killing, destroying, or stealing any red or fallow Deer, &c. shall be guilty

ty of Felony without Benefit of Clergy.

He who steals tame Deer, knowing them to be tame, is guilty of Felony.

New-
sham's
Case.
W. Jones
275.

At a Justice-Seat held for the Forest of *Windsor*, one *Newsham* was convicted and fined 5 *l.* for concealing the Killing a Stag by another Person.

Law Cases.

Atkinson
v. Hunter.
3 Lutw.
1359.
See the
Declaration
at the
End of
this Title.

Trespafs for killing a tame Deer ; the Defendant pleaded in Bar, that he was possessed of such Lands, &c. for a Term of Years yet to come, and that a *stray Deer* came on the said Land, and that he, not knowing it to be tame, killed it, &c. which is the same Killing of which the Plaintiff complained ; and upon a Demurrer to this Plea, there was not any Thing said to maintain it ; but it was adjudged that the Declaration was ill, because the Plaintiff did not aver that the Defendant *knew the Deer to be tame* ; for if he did not, then 'tis no Fault to kill him upon his own Land ; and yet it was agreed that *sciens* is not traversable, but that upon pleading

ing the General Issue, it should have been proved at the Trial, that the Defendant knew the Deer to be tame.

This seems to me a mere Nicety in Pleading ; 'tis true, where an Action was brought against the Owner of a Dog for killing the Plaintiff's Sheep ; it was set forth in the Declaration, that the Defendant * *knew* * See the the Dog did usually bite Sheep, and *Case of* probably it had not been good with- *Cropper* out it, because the Defendant being *v. Mat-* the Owner of the Dog, could not *thews.* be a Stranger to his Qualities ; but *postea Ti-* in the principal Case it might be im- *tle Dogs.* possible for the Defendant to know the Deer was tame, for he might never see it before it came on his own Land ; and what Evidence can be given that he knew it to be tame ?

Certiorari to remove a Conviction *The* for Deer-stealing ; it was objected *Queen v.* that the *Conviction* appeared to be a *Barrett.* Year after the Day when the Infor- *1 Salk.* mation was exhibited ; but adjudged, *383.* that if the Information is prosecuted within a Year after the Fact, 'tis well enough, because it is a good Commencement of the Suit, and 'tis from the Day of the Information, and not

from the Conviction, that the Time in such Cases is to be computed.

Then it was objected, that the Distribution of the Forfeiture ought to have been made by the Judgment, (*viz.*) ten Pounds to the Informer, ten Pounds to the Party grieved, and ten Pounds to the Poor, &c. but here it was, that the Defendant *convictus est & forisfaciat summam 30 l. juxta formam statuti*; but adjudged, that the Judgment in such Cases seldom or never makes any Distribution, because 'tis only conditional; for if the Offender hath not Goods to be distrained, he cannot forfeit, but must be punished in another Manner.

The
Queen v.
Jennings.
1 Salk.
383.

The Defendant was convicted upon the Statute 3 & 4 W. by a Justice, who entered into a Glover's House, and finding a *Deer-Skin* there, asked him how he came by it, who answered, that he bought it of T. S. who not giving a good Account of himself, he the said T. S. was convicted; and adjudged, that the Justice might enter and convict the said T. S. who sold it.

The
Queen v.
King.

Two Persons were convicted upon the said Statute for Deer-stealing, and Judgment was given, that each of them

them should forfeit 30 *l.* and this being removed into *B. R.* it was insisted that this being but one Offence, there ought to be but one Forfeiture, viz. 30 *l.* and no more ; but adjudged, that the Forfeiture is not in Nature of Satisfaction to the Party grieved, but a Punishment of the Offender, and Crimes are several, tho' Debts are joint. See *Partridge versus Nailour* * *Cro. Eliz.* 480.

* *Noy* 60.
S. C.
Moor
453. S. C.

The Question was, whether he who *lent Dogs* to another to course Deer was *aiding and assisting in the Hunting* ; and by the Opinion of three Judges he was ; but *Holt* Chief Justice was of a contrary Opinion ; for this being a Question upon a penal Law, which ought to be construed strictly, then he who *lent the Dogs*, could not be *assisting in the Act of Hunting*, and so not within the Words of the Statute, which are *aiding and assisting* therein ; now he was not assisting *therein*, though by lending his Dogs he might be assisting *thereunto*.

A Conviction for Deer-stealing was removed into *B. R.* and there it was confirmed ; and upon a *Levari facias* directed to the Sheriff, he levied the

The King
v. Speed.
1 Salk.
379.

D 4

30 *l.*

30^l. Forfeiture by Sale of the Goods ; and adjudged, that the Sale was good, because the Court being possessed of the Cause, the Record could not be sent back again to the Justices ; and as they have Power to confirm the Conviction, by Consequence they have Power to award Execution, which must be by the Sheriff, who is the Officer of the Court, and not by the Constable ; and it must be by *Levari facias*, because the Words of the Statute are, that the Offender shall forfeit, &c. to be levied by Distress and Sale, &c. and where the Law gives a Distress for a publick Benefit, the Officer may sell.

An Indictment for hunting and taking
a Deer.

Berks ss. **J** U R', &c. quod T. S. de
H. in Com' prædict' Yeoman 30 die Decembris Anno Regni,
&c. circa horam duodecimam ejusdem
diei aggregatis sibi diversis aliis malefactoribus & pacis Domini Regis
perturbatoribus ignotis Vi & armis
videlicet baculis ferro munitis pugionibus & cultellis & aliis armis
* clau-

* clausum & parcum cujusdem J. L. * If 'tis
 Bar' apud L. in Com' prædict' illi- not a Park,
 cite fregerunt & intraverunt & Da- then say,
 mas ipsius J. L. adtunc & ibidem de- Separ-
 pascentes & cubantes in parco prædict' lem clau-
 cum duobus canibus Leporariis, An- sum usi-
 glisce Greyhounds, venatus est & cum tat' pro
 Rete vocat' a Buckstall quod prædict' custodi-
 T. S. in parco prædict' adtunc habuit end' &
 & cum canibus prædict' duas Damas nutriend'
 adtunc & ibidem cepit occidit & as- Damas
 portavit contra Voluntatem prædict' J. L. cujusdem
 J. L. & sine aliquo legali titulo vel † 3 Jac.
 autoritate sic facere & contra pacem, i. c. 13.
 &c. ad grave damnum ipsius J. L. "Tisthree
 & contra formam † statut' in hujus- Months
 modi casu edit' & provis'. Impri-
 sonment
 and tre-
 ble Da-
 mages to
 the Party
 grieved.
 Expired.

Declaration in Trespas for killing a
 tame Doe.

Surrey ss. **L**eonardus Hunter de H. Atkinson
 in Com' prædict' at- v. Hun-
 tachiatus fuit ad respondendum T. A. ter.
 de C. in Com' prædict' Ar. quare
 cum prædict' Leonardus 30 die De-
 cembris Anno Regni, &c. Vi &
 armis quandam Damam domitam
 & mansuetam ipsius T. A. pretii
 decem librarum apud paroch' de C.
 D 5 præd'

Deer. Dogs.

*præd' nuper invent' interfecit cepit
& asportavit & alia enormia ei intulit, &c.*

The Defendant pleaded in Bar, that he was possessed of twenty Acres of Land in C. aforesaid, for the Term of seven Years; and being so possessed, a vagrant Doe *erratica vagrans & incognita tempore quo, &c.* devenit in prædict' Viginti acras terræ & prædict' Leonardus non sciens prædictam damam fore domitam & mansuetam eandem damam prædict' tempore quo, &c. sic in Viginti acris terræ invent' & existen' cepit & asportavit prout ei bene licuit, &c.

Dogs.

There are two Sorts of Dogs more valuable in Law than the Rest, and those are a *Greyhound* and a *Mastiff*; the first of these, (*viz.*) a *Greyhound*, in *Latin Vertagus*, was very much esteemed amongst the Antients; for by the old *Burgundian Laws* it was provided, that he, who wilfully did hurt a *Greyhound*, *coram omni populo posteriora ipsius osculetur*: And
Mar.

Martial, the witty Epigrammatist writing of these Sorts of Dogs, thus expresseth himself :

*Non fibi sed Domino Venatur Ver-
tagus acer,
Ille suo Leporem qui tibi dente feret.*

And I see no Reason but why a *Hound* may be comprehended under the Name of a *Greyhound*, both of them being valuable only as they make Sport for the Owners, and in that Respect *Hounds* should have the Preference ; because they naturally pursue more Sorts of Game then *Greyhounds*, and are commonly kept by Persons of a superiour Degree, which may be the Reason that some *Physicians* have designedly treated of their Cure ; as for Instance, *Ferom Frocastorius*, a famous *Italian Physician* in the 15th Century, wrote a Book *de Curâ Canum Venaticorum*.

The other is a *Mastiff*, in *Latin* *Molossus*, from *Molossia*, a Town in *Epirus*, from whence the fiercest of that Kind were bought to *Rome*, and so into *Britain* ; this Creature is another Species of Dogs, and valuable not for Recreation, but for his Vigilance

Dogs.

to protect the House and Goods of the Owner ; for 'tis a watchful Servant ; and so long ago as the Reign of *Augustus Cæsar*, one *Gratius* a Poet in his *Cynegeticon*, or Poem of Hunting, highly commends the Courage of our *English* Mastiffs, but will not allow them to be handsome, *Hæc una est catulis jactura Britannis* ; and *Pliny* who wrote in the Reign of the *Emperor Trajan*, tells us, that *Britain* had couragious Mastiffs, and so they are still ; for *Anno* 1602. an *English* Mastiff beat a Lion, for which Prince *Henry*, (who saw them fighting) allowed a Pension to maintain the Mastiff as long as it lived, and gave strict Order that he who had beaten the King of Beasts, should never afterwards encounter an inferior Creature.

Stow's
Annals,
fol. 336.

Fuller's
Worthies
fol. 18.

These *Mastiffs* were so highly valuable, that 100 of them were sent as a Present to the *Pope*, and the City of *St. Malo* in *France* was garrisoned with a Regiment of Mastiffs, many of them of *English* Breed ; but the best for baiting Bulls are bred in *Lincolnshire*, that being a Sport in which the People about *Stamford* are very much delighted.

Be-

Dogs.

61

Besides, Greyhounds and Hounds are Creatures which naturally pursue the Game ; but several Persons being restrained by particular Laws to keep them, I shall therefore shew,

ff. (1.) Who may keep them, and who not.

(2.) And of seising them, being kept by Persons not qualified by Law.

(3.) What Actions may be brought for them, and for Mastiffs.

As to the Keeping and Seising them, 'tis by Virtue of several Statutes made, and now in Force, concerning Dogs ; the first which I find is *Anno 13 R. 2.* by which 'tis enacted, *That a Layman who hath not c. 13. Lands or Tenements to the Value of 40 s. per Annum, or any Priest or Clerk, who hath not 10 l. per Ann. shall not keep any Greyhound, Hound, or Dog, to hunt or destroy Deer, or other Game of Gentlemen, on Pain of one Year's Imprisonment ; and Justices of Peace may punish this Offence.*

No Person of what Estate, Degree, 14 & 15 or Condition soever he shall be, shall H. 8. c. 10. trace, destroy, and kill any Hare in the Snow, with a Dog, or otherwise, under Pain of 6 s. 8 d. for every Offence,

fence, which the Justice shall levy by Warrant, &c.

23 Eliz.
c. 10.

The next Statute was made Anno 23 Eliz. by which it is enacted, That no Person shall hawk, or hunt with his Spaniels, in any Ground where Corn or Grain is growing, and eared or podded, until 'tis shock'd or cock'd, on Pain of forfeiting 40 s. to the Owner of the Corn, to be recovered in the Sessions, or in the Leet; and any Justice hath Power to take Bond with Sureties, for the Appearance of such Offender at the Sessions, if the same is not before determined at the Assizes, or at the Leet.

1 Jac. 1.
c. 27.
continu-
ed by
3 Car. c. 4.
and to the
first Ses-
sion of the
next Par-
liament,
and from
thence
till some
other Act

The next Statute of this Nature was made Anno 1 Jac. 1. by which 'tis enacted, That he who shall keep a Greyhound to course Deer or Hare, or Setting-Dog to take Pheasants or Partridges, and shall be convicted by two Justices, by the Oath of two Witnesses, he shall be committed, except he forthwith pay to the Parish-Officers to the Use of the Poor 40 s. unless he shall be seised in his own Right, or other Act shall be made for the Continuance, or the Discontinuance thereof.

in Right of his Wife, of Lands, Tenements, or Hereditaments, of the clear yearly Value of * 10 l. of some * This Estate of Inheritance, or for Term of Qualification is repealed by Stat. 7 Jac. 1. c. 11. and made 40 l. per Ann.

of Inheritance, 80 l. per Ann. for Life, or 400 l. personal Estate; and by the Statute 22 & 23 Car. 2. c. 25. tis 100 l. per Annum, for his or his Wife's Life, or 150 l. per Annum for the Term of Ninety-nine Years, or the Son and Heir of an Esquire, or one of a higher Degree.

Every inferior Person who shall take, kill, or destroy, any Pheasant or Partridge with a Setting-Dog, and be convicted by Confession, or by Oath of one Witness before two Justices, shall be by them committed for three Months, unless he forthwith pay to the Parish-Officers 20 s. for every Bird, and shall enter into a Recognizance of 20 l. with Condition not to destroy any Pheasant, &c. for the Future.

7 Jac. c. 11. Continued by 3 Car. c. 4. to the End of the next Sessions of Parliament, and from thence till some other Statute shall be made

to continue, or discontinue the same.

Every

Every Constable, &c. by Virtue of a Warrant of two Justices, may enter the Houses of those who are suspected to keep Setting-Dogs; and if they find any such, to take, carry away, kill or destroy them, as forfeited to such Officers who shall find them.

22 & 23
Car. 2.
c. 25.
The Preamble is, that several disorderly Persons laying
Dogs to kill Hares or Conies may be seized by a Game-keeper, if they belong to a Person not qualified to keep them; and any Person, by a Warrant from one Justice, may search the House of a Person suspected, and seize them for the Use of the Lord of the Manor.

aside their lawful Trades and Employments, did betake themselves to the stealing, taking, and killing Conies, Hares, Pheasants, Partridges, and other Game (intended to be preserved by former Laws) with Guns, Dogs, &c. to the Prejudice of Noblemen and Gentlemen, &c.

4 & 5 W.
c. 23.
The Preamble re-
Dogs, (*viz.*) Greyhounds, Setting-Dogs, Coney-Dogs, or Lurchers, for the Destruction of the Game, being found by the Constable upon a Search several

good and necessary Laws have been made to preserve the Game; but that for want of due Execution thereof, the Game hath been very much destroyed by idle Persons, who afterwards do betake themselves to Robberies, and neglect their lawful Employments.

War-

Warrant, in the Possession of any Person not qualified to keep them; and being convicted before one Justice by Confession, or the Oath of one Witness, shall forfeit any Sum not exceeding 10 s. nor under 5 s. for every Dog, &c. one Moiety to the Informer, the other to the Poor, to be levied by Warrant, &c. by Distress and Sale; and if no Distress can be taken, then to be sent to the House of Correction, not exceeding one Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

Dogs, (viz.) Greyhound, Lurcher, 5 Annæ. Setting-Dog, or Tumbler, to destroy c. 14. the Game, kept or used by a Person not qualified; and being convicted by a Justice where the Offence was done, forfeits 5 l. one Moiety to the Poor, the other to the Informer, and to be levied by Warrant of the Justice by Distress and Sale; and if no Distress can be had, then to be sent to the House of Correction for three Months for the first Offence, and four Months for the next Offence.

If any Person not qualified by Law, 3 G. c. 11. or not truly and properly a Servant of the Lord or Lady of a Manor, or not immediately appointed to kill the Game,

Dogs.

Game for their sole Use, under Colour of any Deputation from any Lord or Lady, shall keep or use any Greyhounds, Setting-Dogs, or Lurchers, to kill and destroy the Game, he shall incur such Pains and Forfeitures, as by the Statute 5 Annæ last mentioned.

Before I mention the Law Cases concerning Dogs, it may be necessary to acquaint the Reader with the Forest Law concerning *expeditating Dogs*, (*i. e.*) that every Man who dwelt in or near the Forest, was to cut off three Claws of the Fore-feet of his Dogs next the Skin, (and not the Ball of the Foot as formerly) that the Dogs might be disabled to hunt the Deer; if this was not done, then upon an Inquisition taken by the *Regarders* at the Court of Regard, which was held every third Year, and certified by them, who it was that owned the Dogs, and presented an Oath to the *Verderors*; the Court in such Case sent Process against them to levy 3 s. on his Goods and Chattels, as a Forfeiture for his Neglect in not cutting off his Dog's Claws; and it was Part of the riding Foresters Office to have the Care and View of *Larwing Dogs*.

W. Jones
288.

Now

Now all the new Forests which were made by H. 2. and his Son and Successor Rich: 1. being disforested by the Charter of the Forest; it was necessary to exempt from this Forfeiture the Proprietors of such Lands, which were once Parcel of the Forests; and this was done by these Words, (*viz.*) * *From henceforth no* * Chap. 6.
Dogs shall be expeditated but in the Places where it hath been accustomed from the Time of the first Coronation of King H. 2. and those were the Places where the antient Forests were long before the Reign of either of those Kings; and which remained Forests after the new Forests were disforested by this Charter; and the Lands restored to the right Owners.

Law Cases adjudged concerning Dogs.

ff. In an Action of Trespass the Plaintiff declared, that he was possessed of a Greyhound *ut de bonis suis propriis*; and that on such a Day he lost it, and that afterwards in Consideration thereof, he (the Defendant) promised to deliver the said Greyhound to the Plaintiff; and upon a Demurrer to this Declaration, it was ob-

Incedon
 v. Higgins.
 3 Leon.
 219.
 Cro. El.
 125. S. C.
 Owen 93.
 Hetly 80.

* Dyer
306.

objected that this Action would not lie, for the Dog being out of the Possession of the Plaintiff, he had no Property in him, because he was *fera naturæ*, and that by a Grant of * *omnia bona & catalla*, a Dog will not pass.

But certainly this must be a Mistake to say that a Greyhound is *fera naturæ*, for 'tis every Day's Experience that he is *domita naturæ*; 'tis a Beast brought up and tamed by the Industry of Man, which is so universally known, that the Plaintiff need not aver in his Declaration that the Dog was tame, because it shall be so intended, and it being a Beast of Use to catch the Game, for those who are qualified to keep them; and therefore the Law regards it, as it doth many other Dogs, of which there are four Sorts, (*viz.*) a Mastiff, a Hound, which comprehends a Greyhound, a Spaniel and a Tumbler; and Tanfeild, (who was afterwards Chief Baron) in arguing this Case tells us, that he had seen a Precedent Anno 13 H. 7. Rot. 35. where in an Action of Assault and Battery, the Defendant justified that T. S. was possessed of a Dog *ut de bonis suis propriis*, and delivered

delivered it to him to keep, and that the Plaintiff would have taken it from him (the Defendant); and thereupon he resisted him (the Plaintiff) and beat him in Defence of the Dog, &c. and that that Hurt was of his own Wrong; and that upon a Demurrer to this Plea the Defendant had Judgment, which shews, that a Man may have a Property in a Dog when 'tis lawful for him to justify the Beating another Man in Defence of it.

In an Action of Trespass the Plaintiff declared, that *T. S. Vi & armis*, Edwards v. Ingleton. took and lead away *an Hound*; and upon a Demurrer to the Declaration, it was adjudged that the Action did lie. Hob. 283.

So where Trespass was brought for taking away a *Blood-hound*; upon not guilty pleaded, the Plaintiff had a Verdict, and 10 *l.* Damages.

And *Trover* was brought for a *Spaniel-Dog*; and upon a Demurrer to the Declaration it was held, that the Action was well brought. Pells v. Leman. Hob. 363.

Trespass against the Defendant for taking away a *Greyhound*; the Defendant pleaded, that the Dog was coursing Athill v. Corbett. 2 Cro. 463.

courſing a Hare on his (the Defendant's) Lands, and thereupon he took and led him away; and upon a Demurrer to this Plea it was held frivolous, which ſhews that Trefpaſs will lie for taking a *Greyhound*; and in this Caſe it was the Opinion of the Court, that an Action of Trefpaſs will lie for killing a *Mafiſſ*.

Wad-
hurſt v.
Damm.
2 Cro. 44.
See poſtea
hic.
Wright v.
Ramſcot.

An Action of *Trefpaſs* was brought againſt the Defendant, for that he on ſuch a Day, and at ſuch a Place, &c. killed his (the Plaintiff's) *Mafiſſ-Dog*; the Defendant pleaded, that Sir *Francis Willoughby* was ſeiſed in Fee of a Warren, &c. in the ſame County, of which Warren the Defendant is, and then was the *Warrener*, and that the Plaintiff's Dog was ſeveral Times killing Conies there; and that he (the Defendant) finding the Dog there (at the Time in which the Trefpaſs is ſuppoſed to be done) running at Conies, he *killed him*, and traversed that he was guilty *aliter vel alio modo*; and upon a Demurrer to this Plea, it was adjudged that the Juſtification was good, both as to the Manner and Matter, (*viz.*) as to the Matter, it being alledged, that the Dog was in

the Warren killing Conies, the Warrener may justify the Killing the Dog.

Trespass was brought against the Barrington Defendant for killing *two Greyhounds*; who justified, for that the *Greyhounds* did chase a Deer in his (the Defendant's) Park, whereupon to prevent further Mischief he killed them; the Plaintiff replied, that the Deer was out of the Defendant's Park, and upon his (the Plaintiff's) Lands, and that he let loose the Greyhounds at the Deer to chase him off his Lands, and that the Greyhounds pursued the Deer into the Park, and there killed him; and upon a Demurrer to this Replication it was held ill, because the Plaintiff did not set forth that he endeavoured to stop the Dogs before they came into the Park; but then it was insisted that the Plea was naught, because though it was unlawful to chase a Deer in the Defendant's Park, yet he could not justify the Killing the Dog; but adjudged that he might.

In *Trespass* the Plaintiff declared, that the Defendant beat and killed his (the Plaintiff's) *Mastiff*, &c. the Defendant pleaded in Bar, that the

Barrington *vers.* Turner.
3 Lev. 28.

Wright *v.* Ramscor.
1 Sand. 84.
Sid 336.
S. C.
Lev. 216.
S. C.

Plain-

Plaintiff suffered his Mastiff to go in the Street without a Muzzel; and thereupon he run upon another Dog of one *Ellen Bagshaw*, which he did bite, (which Dog was kept by the said *Ellen*, for the better Security of her House), and that the Defendant as her Servant *killed the Mastiff* least he should do any further Damage; and upon a Demurrer to this Plea it was adjudged ill, because a *Mastiff* is a valuable Dog, and therefore the Defendant could not justify killing it without a reasonable Cause; 'tis true he might justify the Beating it to prevent farther Mischief, but not to *kill it*, unless it could not be otherwise prevented; but by this Plea it doth not appear but that the Defendant might have saved his Mistress's Dog without killing the Mastiff; and that was the Case of * *Wadburst Damm*, where the Defendant justified the Killing a Mastiff, because he could not be otherwise prevented from doing Damage in the Warren.

* Antea
hic.

3 Lev.
326.
Cham-
bers v.
Wark-
house.

Trover, &c. and amongst other Things, *de sex Catulis*; after a Verdict for the Plaintiff, upon Not guilty pleaded, it was moved in Arrest of Judgment, that *Catulis* signified *Whelps*
of

of any *Species*, as of *Foxes, Bears, &c.* but adjudged, that it shall be intended Dog-Whelps; and that a Man may have a Property in a Dog.

The Defendant sold a *Lurcher* to the Plaintiff, who promised to re-deliver him to the Plaintiff, as often as he should return to the Defendant, which he had not done; and it was held that the Action was well brought. Elliott v. Richardson. 1 Keb. 608.

In an Action on the Case the Plaintiff declared, that the Defendant in such a Parish *knowingly did keep a Dog*, which usually did bite Men; upon Not guilty pleaded the Plaintiff had a Verdict, and 100 *l.* Damages; and it was moved in Arrest of Judgment, that the Declaration was ill, because the Plaintiff did not set forth that the Defendant did know the Dog was accustomed to worry Men; for the Word *Knowingly* in this Declaration must relate to the Keeping the Dog; and so is the Case of **Kinion and Davis* in Point, which is very true; but the Rule in that Case was made without any Debate of the Point; and it was, that the Defendant should have Judgment *Nisi causa, &c.* so that it might be the Negligence Cropper v. Mathews. Sid. 127. See the Case of Atkinson v. Hunter. antea Tit. Deer. *Cro. Car. 350, 487.

Ignorance of the Plaintiff in that Case that the Rule did stand ; therefore in the principal Case there was a contrary Judgment, and that it would be impertinent that the Word *Knowingly* should only relate to *the Keeping the Dog*, because he who keeps a Dog must know that he keeps it : The Judgment was affirmed.

Dyer 25. Case, &c. against the Defendant for keeping a Mastiff, *sciens* the Dog was accustomed to *bite Hogs* ; upon a Demurrer to the Declaration it was adjudged that this Action would not lie, because 'tis not only common, but in many Cases necessary for Dogs to bite Hogs ; and therefore not like the Case where an Action is brought for keeping a Dog, which usually did bite Sheep.

Cro. Car. But in *Boulton and Bank's* Case it was resolved, that the Action would lie against the Defendant for keeping a Dog, knowing he usually bit Sheep ; for it was not lawful to keep such a Dog.

Keek v. In Trespass for killing his Mastiff ;
Halsted. the Defendant pleaded that it was a
2 Lutw. fierce Dog, and that it did often bite
1494. both Men and Cattle, of which the
Plaintiff had Notice, and that this
Dog

Dog came into his (the Defendant's) Yard against his Will, so that he was afraid to go out of his House, of which the Plaintiff had likewise Notice ; and that he (the Defendant) desired the Plaintiff to keep his Dog out of his (the Defendant's) Yard ; which he refusing or neglecting to do, the Defendant shot the Dog in his own Yard, and traversed that he was guilty of any Trespass *extra atrium suum* ; the Plaintiff replied *de injuria sua propria*, upon which they were at Issue, and the Defendant had a Verdict ; and by the Opinion of the whole Court, the Plea was adjudged good.

The Defendant was convicted up- 5 Annæ
on the Statute 5 Annæ for keeping a c. 14.
Greyhound, and killing four Hares, The King
not being qualified, *which Conviction* v. Gage.
was upon his own Confession ; now by 9 G. B. R.
the said Statute the Forfeiture of 5 l:
relates to the Conviction, so that if
'tis not made according to the Sta-
tute, nothing is forfeited ; now it
was insisted that the Conviction in
this Case was not according to the
Statute, because that directs it should
be by the Oath of one credible Witness
before one Justice, but here it was by

his own Confession ; besides, the Justice before whom the Party was convicted, having no Power but what he derives from the Statute, for that Reason it ought to be pursued ; but adjudged, that the *Confession of the Offender* is the strongest Evidence against himself ; and though 'tis not within the Letter, yet 'tis within the Reason and Meaning of the Statute ; therefore where the Conviction is upon a stronger Evidence than required by the Statute, it must be good.

Miller v. In *Trespass* the Defendant pleaded,
Cawdry. that the Plaintiff's Sheep were in his
Poph. 161. (the Defendant's) Ground, and that
he chased them from thence with his
Dog, which pursued them into the
Plaintiff's Ground adjoining, and that
he immediately chid his Dog, *quæ est
eadem transgressio, &c.* and upon a
Demurrer to this Plea, it was object-
ed, that though 'tis lawful to chase
Cattle out of his Ground with a
Dog ; yet he ought not to exceed
that Authority which he hath by
Law, (*viz.*) (to pursue them into an-
other Man's Ground), for if he
doth, 'tis void in all ; but adjudged,
that the Plea was good, for 'tis the
Nature of a Dog not to be ruled on
a sud-

Dobe and Dobe-cote.

77

a sudden; therefore the Defendant had not abused that Authority, which he lawfully had.

Dobe and Dobe-cote.

So long ago as * 18 Ed. 2. a Sta- * 18 Ed. 2.
tute was made of what Things Stew-
ards in Leets should enquire; and a-
mongst the rest they are to inquire
of such who take Doves in the Win-
ter by Door-falls or Engines.

By the Statute 1 Jac. 1. none shall 1 Jac. 1.
shoot at, kill or destroy any House- c. 27.
Dove, Pidgeon, &c. under the Penal- † To the
ty of † 20 s. for every Dove; which Use of the
if not paid to the Parish-Officers im- Poor.
mediately upon Conviction, (which This Sta-
is to be by Confession, or by Oath tute was
of two credible Witnesses, before two continued
Justices of the County or Town by 3 Car.
where the Offence was committed, or c. 4. until
the Offender apprehended) then he the End of
shall be committed to the Common the first
Gaol for three Months without Bail, Sessions of
and shall within one Month after his the next
Parlia-
ment, and
from thence
till some
other Statute should be made for the Continuance or Dis-
continuance thereof, which is not yet done.

Dobe and Dobe-cote.

Commitment enter into a Recognizance with two sufficient Sureties in 20 *l.* a-piece, with a Condition that he shall not at any Time hereafter shoot at, kill, take or destroy any Pidgeon, &c. which Recognizance is to be taken by two Justices where the Offender shall be imprisoned, and shall be returned at the next Quarter-Sessions.

4 & 5 W.
c. 23.
made perpetual by
9 Annæ
c. 25.

Where a *Dove* shall be found by a Constable on a Search-Warrant upon one who is not qualified; and if he doth not give the Justice a satisfactory Account how he came by it, or produce the Person of whom he bought it, or some credible Person to attest the Sale, he shall be convicted by the Justice, and forfeit not exceeding 10 *s.* for every Pidgeon, nor under 5 *s.* one Moiety to the Informer, and the other to the Poor, to be levied by a Warrant by Distress and Sale of the Goods of the Offender, who for want of Distress shall be committed to the House of Correction not exceeding one Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

Law

Law Cases.

I shall first mention the Resolution of the Barons of the Exchequer in * *Hardy and Boulston's*, which was * 5 Rep. taken for Law merely upon the Authority of my Lord Coke who reports it, who doth not tell us what his own Opinion was; but I believe he took that Resolution for Law, otherwise he would not have reported it; and 'tis as followeth.

ff. Resolved that none may newly erect a Dove-house but the Lord of a Manor; and if any do, he may be punished in the Leet; but no Action on the Case lieth for any particular Man, for the Multiplicity of Actions, which in such Case might be brought.

Before I proceed, I must take Notice that this was not the Point then in Question; for that was, *If a Man make Coney-Burrows in his own Land, and the Conies encrease to such Numbers, that they destroy his Neighbours Ground, whether such Neighbour might kill them.*

Dove and Dove-cote.

So that this Resolution about the *Dove-house* was extrajudicial and by the By, and 'tis certainly both against Law and Reason; for why should a *Lord of a Manor* have a greater Privilege to erect a Dove-house, than any other Freeholder? for if it is punishable *in the Leet*, it must be because 'tis a *common Nuisance*; and if so, then the Lord of the Manor can have no Right to erect a common Nuisance; but 'tis not a Nuisance either by the Common Law, or by any Statute; not by the Common Law, because a Man may have a good Title by Prescription to a Dove-cote, and a *Præcipe* lies of it; and a Widow may be endowed of it, which could not be, if the Erecting it was a common Nuisance.

Besides, there are several Statutes made to preserve Doves from Destruction, and particularly the Statute 1 *Jac. 1. cap. 27.* by which 'tis prohibited to Persons not qualified to destroy a Dove, under the Penalty of 20 s. for every Dove, or to be committed for three Months without Bail; and 'tis absurd to affirm that a Statute should be made to preserve a Nuisance.

Then

Then to say that no Action lieth by a particular Person, because of the Multiplicity of Actions which might be brought ; this is contrary to another Resolution in the same Book, *Willi-* which is, that where some Persons *am's Case,* have more particular Damages than *5 Rep. 72.* others, they may have several Actions to recover their Damages.

However, because of the Solemnity of this Resolution, it being by all the *Barons of the Exchequer* ; and it being supported by the Authority of my Lord *Coke* who reported it, the Courts of Common Law would not immediately break in upon it, which they afterwards did, but yet very tenderly ; as in the next Case of like Nature, which was an Indictment against the Defendant for erecting a Dove-cote, there was no Objection made as to the Matter, for which *Godb. 284.* the Defendant was indicted ; but it *Vesey's* was quashed, because it did not set *Case.* forth, that there were Doves in it.

The next Case was between *Prat Pratt v.* and *Sterne*, which was thus, (*viz.*) *Sterne.* A Freeholder erected a Dove-cote on *2 Cro. 382.* his Freehold Land, where there was *Godb. 259. S. C.* none before, and stored it with Pidgeons ; this was *presented at the Leet*

Dove and Dove-cote.

for a *Nusance*, and the Defendant was ordered to remove it by such a Day ; which not being done, he was amerced to 20 s. and the Lord of the Leet distrained for the same.

And first, The Court doubted whether this could be presented as a *Nusance* ; and my Lord Coke, who was now Chief Justice, said, that there was no Reason why a Lord of a Manor should have a Dove-cote more than another Freeholder ; and it being insisted, that this is an Offence *punishable in the Leet* ; because by the Statute 18 Ed. 2. reciting the Articles of the Charge at a Leet, it appears, that one of those Articles is to make Enquiry of Dove-cotes *erected without Licence* ; my Lord Coke thereupon asked a very material Question, (*viz.*) *who shall give such Licence ?* the Lord of the Manor cannot ; for if 'tis a *Nusance*, he himself cannot erect a Dove-cote, and the King cannot because 'tis a *Nusance* ; but in the principal Case, the Presentment was quashed, because it did not set forth that the Building the Dove-cote was *ad commune nocumentum Ligeorum Domini Regis*.

Afterwards in the next Case of this Nature *Boulston's* Case was denied to be Law; and this controverted Point was then settled.

J. In Trespass upon a Demurrer Dewell v. Sanders. the Case was, the Plaintiff being a Freeholder within the Manor of *Ipsleworth* in *Middlesex*, erected a Dove cote on his own Lands, and stored it with Pidgeons, and suffered them to fly out, which was presented at the Leet as a common Nuisance, and a Pain of 10 *l.* was imposed on him, if he did not remove it before such a Day; which not being done, it was presented at the next Court, and the Pain thus imposed was assessed to 8 *l.* and for Non-payment thereof, a Distress was made on his Goods and Chattels; whereupon he gave Bond for the Payment of the Money, and afterwards brought an Action of Trespass for taking and detaining his Cattle, till he entered into the said Bond; the Defendant pleaded specially, and set forth all the Matter before-mentioned; to which Plea the Plaintiff demurred; and it was adjudged by the whole Court, that the Erecting a Dove-house by a Freeholder on his own Land, and storing

2 Cro.
490.
Poph.
141. S. C.

storing it with Pidgeons, is *not a Nufance inquirable in a Leet*, because 'tis not a common Nufance to all People; for if 'tis any Nufance, 'tis only so to those whose Corn they eat; besides, a Man hath *jus proprietatis & privilegii* in Pidgeons, and both in respect to the Place where they are, (*viz.*) in his Dove-cote.

Drifts of Cattle.

32 H. 8. *Agitatio Animalium*; this is when
 c. 13. all the Cattle of the Forest, or other
This Statute is called the Bill for the Breed of Horses, and it recites, that the Generation of strong Horses not only extendeth to the Defence of the Realm, but to the Profit of the People; and that such Breed was much decayed by putting little Stone-Horses of small Value in Forests, Chases, Commons, &c. and by their Covering Mares there, &c.
 great Commons, are driven together into a certain Place enclosed, and which may contain all of them; and this is to be done every Year by Virtue of the Statute 32 H. 8. either at *Michaelmas*, or within fifteen Days after by the Keepers and Officers of the Forests and Common Grounds, on Pain of 40 s. who have also Power by the Statute to drive them at any other Time in the Year, as they shall think fit; and the Own-

ers of those Grounds have the like Power.

And this is to be done for the Purposes hereinafter-mentioned, (*viz.*) to see that those who claim a Right of Common, either by Grant or Prescription, do put in such, and so many Cattle, and *no more* than they ought; and to see whether the Common is surcharged, and what Strangers Cattle are there, who have no Right of Common; and likewise to see whether the *Horses are well fised*; for by this Statute 'tis prohibited to put Stone-Horses to feed in Forests or Common Grounds, being above two Years old, and not 15 Hands high, from the lower Part of the Hoof, to the upper Part of the *Withers*, (every Hand to contain four Inches) on Pain to forfeit the Horse; and if upon the Drift any unlikely Tits shall be found, they shall kill them.

Duck.

Duck.

1 Jac. 1.
c. 27.

He who shall shoot at, kill or destroy with any Gun, &c. any Duck, and be convicted thereof by Confession, or by the Oath of two Witnesses, before two Justices of the County or Town where the Offence shall be committed, or where the Offender shall be apprehended, shall be committed to the Common Gaol for three Months, unless he immediately pay to the Parish-Officers 20 s. to the Use of the Poor for every Duck, and shall within one Month after his Commitment enter into a Recognizance, to be taken by two Justices, with two sufficient Sureties in 20 l. a-piece, conditioned that he shall not at any Time hereafter shoot at, kill or destroy a Duck, by the said Means.

9 Annæ
c. 25.

If any Person between the 1st of July, and 1st of September in any Year, shall with Hays, Funnels, or Nets, drive and take away any wild Duck, or other water Fowl in the Fens, or other Places of Resort for wild Fowl in the molting Season, and be convicted thereof before one Justice,

Justice, by the Oath of one Witness, he shall forfeit 5 s. for every Duck, to be divided between the Informer and the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale, by Warrant from the said Justice; and for want of Distress, to be committed to the House of Correction not exceeding one Month, nor less than fourteen Days, there to be kept to hard Labour and whip'd.

I do not find the Word *wild Duck*, or *Duck*, mentioned in any other Statute than these two Statutes before-mentioned; and I do not think 'tis comprehended under the Word Game or * *Fowl*; and this Prohibition of shooting, killing, or destroying wild Ducks with any Gun, extends only to those who are not qualified to keep or use Guns.

* *A Mallard is comprehended under the Word Water Fowl,*

in the Statute 9 Annæ, cap. 25.

Eggs.

Eggs.

11 H. 7. **E** G G S of a *Faulcon, Gofshawk,*
c. 17. *Lanner or Swan,* shall not be
taken out of their Nests, under Pain
of Imprisonment for a Year and a
Day, and to be fined at the Pleasure
of the King; which Fine shall be di-
vided between the King and the
Owner of the Ground where the
Nests are; but if they are *Swans*
Eggs, then to the Owner of the
Swans.

25 H. 8. He who destroys the Eggs of any
c. 11. *wild Fowl,* shall be committed for a
See 3 & Year, and shall forfeit 1 s. 8 d. for
4 Ed. 6. every Egg of a *Crane or Bustard,*
c. 7. and for every Egg of a *Bittern and*
The said and for every Egg of a *Bittern and*
Act 25 H. *Hern* 8 d. and of a *Mallard, Teal,*
8. recites, or other wild Fowl 1 d. to be divided
that there between the King and the Prosecu-
hath been great Plen-
ty of wild Fowl, whereby the King's Household, and the
Houses of Noblemen and Prelates, have been furnished
at reasonable Prices; but that now the Breed of wild
Fowl was almost destroyed, &c.

tor, being convicted before one Justice, &c.

None shall take any *Hawks Eggs* 5 Eliz. on Pain of Imprisonment for three c. 21. Months, and to be bound with sufficient Sureties for the good Behaviour for seven Years.

Taking or breaking the Eggs of a ^{1 Jac. 1.} *Pheasant* or *Partridge* in their Nests, c. 27. and being convicted before two Justices, by Confession, or Oath of two Witnesses, shall be committed to the Common Gaol without Bail for three Months, unless he pay to the Parish-Officers 20 s. for every Egg, to the Use of the Poor; and shall within one Month after his Commitment enter into a Recognizance before two Justices, with two Sureties, in the Penalty of 20 l. a-piece, with Condition that he shall not destroy any such Eggs again.

Eyre of the Forest.

See the Statute of Marl-bridge. 52 H. 3. c. 24. Westm. 1. c. 18. 3 Ed. 1. Westm. 2. c. 10. 13 Ed. 1.

Eyre is derived from the old French Word *Erre*, in Latin *Iter*; and the *Eyre* of the Forest is the Justice-Seat; and where-ever we read of an Allowance in *Eyre*, it must be understood an Allowance by the Chief Justice in *Eyre*, at the Court of Justice-Seat, which by antient Custom was held once in three Years by the Justices of the Forests *itinerantes* for that Purpose.

The Process of this Court is *de honorâ in horam*, and no Allowance of a Claim in any other Court will put the King out of Possession of any Thing within the Forest; for the Court of King's Bench hath no Jurisdiction in Forest Cases.

There cannot be a *Demurrer* to any of the Proceedings in *Eyre*, neither is the Attorney General *ex officio* to attend the Court; for in antient Times there was a special Attorney for the King, which Attorney was to attend that Court; but when any Claim is made, it must be read to the Court,

Court, and the Allowance or Disallowance is thus entered.

ff. Quibus lectis, &c. but after the Claim is read, there is an Entry on the Record, (if there is any Issue) that *qui sequitur pro Domino Rege petit quod inquiretur*, and there is no Confession by the Plea ; but the Party only says, that *Visis Præmissis non* W. Jones.
dedicit. 272.

A Prescription to be out of the Regard of the Forest, (*i. e.*) to be quit of Fees due to the Foresters, is not good, without it hath been *allowed in Eyre* ; nor any Liberty which goes to the Destruction either of Vert or Venison. W. Jones.
291.

Fence.

Defence-month.

THIS is sometimes called *Fœnatio*, and sometimes *Foinesun*, which signifies the Time when Deer *fawn*, being fifteen Days before *Midsummer*, and fifteen Days after; in which Time 'tis prohibited by the Laws of the Forest to hunt therein, and that no Hogs should be there; 'tis sometimes called *Mensis prohibitionis*, or the forbidden Month; 'tis likewise called the Defence-Month, and in *Latin* 'tis *ponantur in defenso*.

Fern.

4 & 5 W. For the Preservation of *Heath-cocks*
 c. 23. and *Heath-poults* a Law was made, that if any Person shall burn Fern between the 2d Day of *February*, and the 24th Day of *June* in any Year, on any *Hills, Moors, Heaths, Forests, Chases*, or other Wastes, he shall be committed to the House of Correction for any Time not exceeding one Month,

Month, nor under ten Days, there to be whip'd and kept to hard Labour.

No Person shall cut any *Heath* or *5 Annæ,*
** Brakes,* in order to burn the same *c. 14.*
 into Ashes, or shall burn it into *9 Annæ,*
 Ashes upon the Ground in *Sherwood c. 25.*
Forest, or in any Waste or Land in ** Fern is*
 the County of *Nottingham,* without *called*
 Licence from the Owner of the Soil, *Brakes in*
 under the Penalty of 10 s. and the *some Coun-*
 Person buying *Fern Ashes* of those *ties.*
 who burn the Fern, forfeits 10 s. for
 every Peck, one Moiety to the Poor,
 and the other to the Informer; the
 Party being convicted upon the Oath
 of one Witness before one Justice,
 and not paying the Penalty, shall
 forthwith be committed to the House
 of Correction, and kept to hard La-
 bour for a Month, unless the Penalty
 is sooner paid.

The Officers of the Forests, or the
 Owners of the Ground, may take
 away the Instruments used for the
 Purposes aforesaid, and may keep
 them.

ferrets.

Ferrets.

13 R. 2. The Statutes concerning Ferrets,
c. 13. are as follow :

§. A Layman who hath not 40 s.
per Annum, or Priest who hath not
10 l. *per Annum*, shall not keep Fer-
rets to destroy *Hares* or *Conies*, on
Pain of Imprisonment for a Year.

22 & 23 Ferrets, if kept by a Person not
C. 2. c. 25. qualified, may be seized by a Game-
keeper, who by Warrant from a Ju-
stice of Peace may search the Houses
and Outhouses, &c. of Persons su-
spected to keep them; and if found,
may seize them to the Use of the
Lord of the Manor, or he may de-
stroy them.

3 & 4 W. Ferrets being found by the Consta-
c. 23. ble, &c. upon a Search-Warrant on
a Person not qualified to keep them,
and who shall not give a good Ac-
count to a Justice of Peace how he
came by them, nor produce the Par-
ty of whom he bought them, in some
convenient Time, or some credible
Person to make Oath of the Sale
thereof, he shall be convicted of the
said Offence by one Justice, and for-
feit

feit for every Ferret any Sum not under 5 s. nor above 20 s. one Moiety to the Informer, and the other to the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale of his Goods; and for Want of Distress, to be sent to the House of Correction for any Time not exceeding a Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

The only Law Case I meet with is ^{2 Ed. 2.} this, (*viz.*) the Paintiff brought a ^{Tit. A-} Replevin for a Ferret, and held good. ^{vowry.}

Fish.

Fishing is both a Trade and Recreation, and 'tis such a Trade as is very beneficial to this Nation, inso-much as Sir *Francis Bacon*, *Anno 5 Jac.* observed in his Speech to the House of Commons, that we can never be overstock'd with People, because we have another Element besides the Earth to maintain us.

Under this Title I shall mention those Statutes which relate to the several Sorts of Fishes following.

J. Bar-

ff. Barbels, Carps, Herrings, Lobsters, Pilchards, Pike and Salmon, and Trouts; and first as to Barbels.

Barbels.

1 Eliz.
c. 17.

This Fish must not be taken under 12 Inches long, the Forfeiture is 20 s. for every Fish, and the Engine with which 'tis taken.

*Spawn
must not
be destroy'd.*

By this Statute all Persons who have a Jurisdiction of Conservancy on Streams, have Power to hear and determine Offences of this Nature, upon the Oath of 12 Men; but the Justices of Peace being generally Conservators of Rivers, may therefore enquire in such Cases.

See *Nets.*

But by the express Words of the Statute, the Sessions have that Power, in Default of presenting this Offence within a Year in the Leets; and the Stewards of Leets are enjoined to give this Statute in Charge, or they forfeit 40 s. to be divided between the Crown and the Prosecutor.

And if the Jury do not present Offences in this Statute, the Steward may impanel a Jury to enquire of their

their Default ; which being found, they shall forfeit 20 s. a-piece.

Carps.

These are stately Fish first brought into *England* about the 5th Year of the Reign of *Hen. 8.* no Fish, except *Eels*, live so long out of the Water, nor longer in the Water ; for the Lord *Verulam* tells us, they will live about ten Years, and that they are better for their Age and Largeness, when most other Fish are worse. *Hist. vita & mortis.*

Herrings.

Herrings shall not be sold at Sea before the Fishermen come to Land.

31 *Ed. 3. c. 1.*

Those of *English* catching must be packed in lawful Vessels before put to Sale, and well laid and pack'd, and shall be of one Time of taking, salting or drying, and equally packed in every Part of the Vessel, and by a sworn Packer, who shall mark the Vessel with a Mark, signifying the Gage thereof, and the Quantity and Quality of Herrings, and the Place
F where

15 *Car. 2. c. 16.*

where packed; and the Bailiffs of *Great Yarmouth*, and the head Officers of every Port, &c. where any Vessels go to fish for Herrings before the 1st of *July* in every Year, shall appoint *Packers*, and give an Oath for well executing their Office, on Pain to forfeit 100 *l.* to be divided between the Crown and the Prosecutor.

* *An Island in the North or frozen Sea, where we once had a great Trade for Fishing.*

† *An Island in the Northern America in Canada, or New France, where is good Fishing from the Spring to Sept. for Cod and poor John.*

No Vessel shall proceed on a Fishing Voyage from * *Iceland* or *West-mony* out of any Port, &c. till the 10th of *March* in any Year, on Pain to forfeit the Ship, and all the Fish caught; and no Person shall take any Duty in † *Newfoundland* for any Fish of *English* Catching, on Pain to forfeit double the Value of what he takes; and none shall lay Nets in or near any Harbour in *Newfoundland*, to take the Spawn of young Fry of *poor John*, or for any other Use, except for taking *Baits*, on Pain to lose the Nets and Fish taken, or the Value thereof, to be recovered in any of the King's Courts in *Newfoundland*, or in Courts of Record in *England*.

None

None shall destroy any Utensils for Fishing or making Oil, or other Goods left in Harbour in *Newfoundland* or * *Greenland* by the *English*, * 10 G. or destroy any House built by the *English* there to live in, during the Fishing Season, or Stage for ordering Fish, or making Oil, on Pain to loose double the Value, to be recovered in any of the said Courts. 15 Car. 2. c. 16. c. 10. An Act for encouraging Greenland Fish-
ing.

Herrings.

The Order and Time of bringing in and selling Herrings at the Fair of *Great Yarmouth*, and there the Price of a *Last* of Herrings shall be 40 s. and there shall be no Forestalling of Herrings; but they shall come freely unfold into the Haven. 31 Ed. 3.
c. 2.

No *Piker* shall buy any fresh Herring in *Yarmouth Haven*, between *Michaelmas* and *St. Martin*, on Pain of Imprisonment at the King's Will, and to forfeit the Herring so bought.

An hundred of Herrings shall be 120, and a *Last* ten thousand.

Merchants shall sell a thousand of Herrings, according to the Rate of the *Last*; and those of *Yarmouth* shall

sell a *Last* of red Herrings bought for 40 s. for a Noble Gain, and those of *London* for a Mark Gain, when they bring them from *Tarmouth*, and not above.

Two *Last* of *shotten Herrings fresh* shall be equal in Price with one *Last* of full Herrings ; and two *Last* of *shotten Herrings red*, shall be sold a *Mark* dearer than a *Last* of full red.
31 *Ed.* 3. c. 2.

All Persons may buy Herrings in the Fair-time at *Great Tarmouth* openly, but not privily ; and no Man shall enter upon a Bargain of Herrings, until the first Chapman hath done with it. 35 *Ed.* 3.

None shall set any Herrings to Sale in *Vessels*, unless the *Barrel* contain 32 Gallons, and the *half Barrel* and *Firkin* accordingly ; they shall also be well pack'd, of one Time's packing and salting, and as good and as well pack'd in the Middle as at the Ends, on Pain to forfeit 3 s. 4 d. for every Vessel wanting Measure, and as much for not being pack'd, according to this Act of 22 *Ed.* 4. cap. 2.

No Cod, Herring, Ling or Pilchard, fresh or salted, dried or bloat-ed; nor Coal'fish, Congers, Grill, Gul-fish, Haddock, Mackerel, Sprats or Whiting; nor any Sort of *flat Fish* what-soever, or *fresh Fish*, shall be imported or sold in *England*, which shall be taken by, bought of, or received from any Foreigner, or out of any Stranger's Bottom, except *protestant* Strangers dwelling in *England*, nor shall exchange Goods for Fish so taken.

Master of a Vessel, in which any Fish shall be imported or brought to Shore contrary to this Statute; and being convicted before one Justice by the Oath of two credible Witnesses; or making Default after due Sum-mons, shall forfeit 20 *l.* for every Offence, to be levied by Virtue of a Warrant by Distress, &c. and where that cannot be had, shall be committed to Gaol for a Year.

This Statute not to extend to the Importing or Buying Anchovies, Botarge, Cavear, Eels, Stockfish, Sturgeon.

§ G. c. 18. For encouraging the Fishing Trade,
Great the Drawback for every Barrel of
Store and *white Herrings* exported, containing
very good 32 Gallons, shall be 2 s. 8 d.
Herrings

are caught For every Barrel of full red Her-
at Yar- rings containing 32 Gallons, 1 s. 9 d.
mouth,

where upon For every Barrel of clean shotten
Michael- Herrings containing 32 Gallons, 1 s.
mas-day and so in Proportion for a greater
every Year or lesser Quantity, which Allowances
there is a shall be paid by the Collectors of the
great Fair Duties on Salt in the Port, from
held for the which such Fish shall be exported
Sale of within thirty Days, upon Demand.
Herrings.

Fuller's No Herrings, &c. after put on
Worthies, Board any Boat for Exportation, shall
fol. 246. be retaken out of such Boat, other-
 wise than to put them into the Ships
 in which they are to be exported;
 nor put on Shore, except in the Pre-
 sence of some Salt-Officer, under the
 Penalties and Forfeitures, as in the
 Act 2 Annæ. c. 14.

§ G. c. 16. At the Beginning of every Fishery
 for Herrings, the Proprietors of Salt
 (delivered free from Duty for the
 curing Herrings to be transported)
 shall make Oath in Writing before
 the Officer for the Duty on Salt,
 declaring the Quantity of Salt lodged
 for

for curing the Fish; and that all the said Salt is intended for curing of Fish for Exportation, &c. and every Curer of *red Herrings*, before he remove them from the Place where cured, (except for Exportation) shall make Entry thereof at the next Salt-Office, and pay a Duty of 1 s. 8 d. for every Thousand so removed, and proportionably for a greater or lesser Quantity; and if pack'd in Casks, then the Number of *red Herrings* in each Cask shall be marked on the Head, &c. on Pain of Forfeiture of the *red Herrings* removed before Entry, and the Duty paid, and the Cask or Vessel, and 40 s. more for every Thousand, and so proportionably for a greater or lesser Quantity, to be recovered of those who remove the same; one Moiety to the Crown, the other to him who shall seise or sue for the same. 8 G. cap. 4.

The like Law for *white Herrings*, only the Duty for them is 3 s. 4 d. for every Barrel; and all Officers of Customs, Excise, or Duties on Salt, may seise all *white Herrings* removed before Entry, and the Casks wherein they shall be found. 8 Geo. c. 16.

Lobsters.

Lobsters must not be sold under 8 Inches from the Peak of the Nose, to the End of the middle Fin of the Tail; the Forfeiture is 1 s. for each Lobster, between the Poor and the Prosecutor; the Conviction is to be before the Chief Magistrate of the Town, or one Justice. 10 & 11 W. cap. 24.

Lobsters may be imported whether of Foreign or *English* Catching. 1 Geo. c. 18.

Pilchards.

13 & 14 C. 2. c. 24. If any besides Owners, Partners, or Adventurers in the Craft of Fishing, shall pack Pilchards in Casks, to be sold or transported, except bought of those Owners, or with their Leave, shall forfeit the Value thereof to the King, and the Informer.

Purloiners of Pilchards must pay the treble Value, or be sent to the House of Correction; and suspicious Persons flocking about Boats, Nets, or Cellars where Pilchards are, and being warned to be gone, and refusing,

ling, shall upon Complaint to a Justice pay 5 s. to the Use of the Poor, or be put in the Stocks for five Hours.

Pikes.

Pikes must not be taken under ten ^{1 El. c. 17.} Inches in Length, on Pain of forfeiting 20 s. and the Engine with which caught.

Salmon.

* Salmon must not be taken from ^{* The Word is derived a} the 8th Day of September to the 11th ^{Saliendo,} Day of November; for the first Of- ^{for no Fish} fence the Nets are to be burnt; nor ^{leaps so} young Salmon at Mill-pools, from the ^{high out of} Middle of April to the 24th of ^{the Water,} June, under the like Punishment; ^{and darts} and for the second Offence to be com- ^{it self for-} mitted for a Quarter of a Year; and ^{wards as} as the Offence encreases, the Punish- ^{this doth;} ment is to do so likewise. ^{they are so} *Westm. 2. plentiful in*
cap. 47. 13 Ed. 1. <sup>some Ri-
vers in</sup>

Scotland, that the Servants agree with their Masters before they are hired, not to eat any above three Times in a Week.

Salmons in *Lancashire* shall not be taken between *Michaelmas* and *Candlemas*. 13 R. 2. c. 19.

None shall sell or expose to Sale any *Salmon* in Vessel before 'tis viewed, unless the *Butt* contain 84 *Gallons*, and the *Barrel* 42 *Gallons*, and the *half Barrel* 21 *Gallons*, well pack'd, on Pain to forfeit for every Vessel 6 s. 8 d. and it shall not be sold or put to Sale in any Vessel, unless it be well pack'd, (*viz.*) the great *Salmon* by themselves, and without mingling any *Grils*, or broken bellied *Salmon* therewith; and the *Grils* shall be pack'd by themselves, on Pain to forfeit 6 s. 8 d. for every Vessel otherwise pack'd and set to sale.

4 & 5 A. An Act was made 4 & 5 *Annæ* cap. 21. for the Encrease and better Preservation of *Salmon*, in the Counties of *Southampton* and *Wiltshire*. 4 & 5 *Annæ*, c. 21.

There is a Clause in this Act relating to the Catching *Salmon* from the 30th of *June* till after the 7th of *November*, which so far as it relates to the Owners of the *Fishery* in the several Rivers in that Act mentioned, and to all others entituled to fish in the same, is repealed by the Statute 1 Geo. c. 18.

None

None shall use any Net or Engine to destroy Salmon under 16 *Inches* long, on Pain to forfeit 20 s. and the Fish so wrongfully taken, and the Net or Engine wrongfully used. 1 *El. cap.* 17.

Owners of Fisheries, &c. may at any Time from the 11th of *November*, till the 1st of *August* in every Year, take, or kill any Salmon, Salmon Peal, or Salmon Kind, or expose them to Sale within the said Times. 1 *Geo. c.* 18.

Bringing any Nets, or doing any Thing in the Rivers *Air, Calder, Derwent, Dee, Dun, Eure, Mercy, Ouze, Ribble, Severn, Swail, Team, Tees, Trent, Ware* and *Wye*, whereby the Salmon not 18 *Inches* or more from the Eye to the Middle of the Tail, may be hindered from going to spawn; or he who from 31st of *July*, to the 12th of *November*, shall hurt any Salmon with Nets; or who after the 12th of *November* shall fish in any of those Rivers not allowed by the Statutes 1 *Eliz.* and 30 *Car.* 2. and being convicted before one Justice, &c. shall forfeit 5 *l.* besides the Fish and Nets, which must be cut to Pieces. 1 *Geo. c.* 18.

Salmon.

Salmon sent to London from any of the said Rivers to Fishmongers, or their Agents, that shall weigh less than *six Pounds each Fish*, and every Person buying, selling, or sending a Salmon of less Weight, and being by one Justice convicted, either by View, Confession or Oath of one Witness, shall forfeit 5 *l.* besides the Fish so bought and sold; one Moiety to the Use of the Poor, and the other to the Informer; which if not paid upon the Conviction, shall be levied by Warrant by Distress and Sale; and for Want of Distress, to be committed, &c. and kept to hard Labour for three Months, unless the Forfeiture be sooner paid; an Appeal lies to the Quarter-Sessions, whose Determination is to be final.
1 Geo. c. 18.

A Barrel of Salmon containing 42 Gallons, being to be exported, an Allowance shall be made of 5 *s.* 6 *d.* for every Barrel, 5 Geo. c. 18. and every *Salmon Barrel* shall be 42 Gallons; and all Exportation of Salmon in Barrels of a different Size, shall be adjudged an unlawful Exportation, &c.

But

But Salmon may be exported in *half Barrels*, according to the Proportion above-mentioned; but in no other Size.

After *Salmon* is put on Board in any River in a Boat, in Order for Exportation, it shall not be taken out of such Boat, otherwise than to be put into Ships, in which they are to be exported, nor put on Shore, except in the Presence of some *Salt-Officer*, on Pain to forfeit 20 *l.* and suffer Imprisonment for a Month. 5 *Geo. c.* 18.

Trouts.

None shall use any Net or Engine to destroy the Spawn of Fish, or take Trouts out of Season, or shorter than 8 Inches, on Pain to forfeit 20 *s.* and the Fish so wrongfully taken, and the Net or Engine wrongfully used. 1 *Eliz. cap.* 17.

The

The Length of Fishes.

1 G. c. 18. ff. Every of these Fishes must be Inches long from the Eye to the Extent of the Tail, 1 Geo. c. 18. (*viz.*) Basse 12 Inches, Brett 16, Brill 14, Codlin 12, Dabb 8, Flounder 6, Mullet 12, Pearl 18, Plaice 8, Sole 8, Turbet 16, Whiting 12.

Fish brought to Shore, exposed to Sale, or changed for Goods, not being of that Length are forfeited, and 20 s. for every Offence, to be divided between the Informer and the Poor, by Moieties, to be levied by Warrant, &c. and Distress, &c. and for want of Distress to be sent to the House of Correction; and there to be whip'd and kept to hard Labour for six Days.

The Prosecution must be within one Month after the Offence committed.

He who takes Fish in a several River or Water, or is assisting therein, without Leave of the Owner, shall make such Satisfaction as the Justice, before whom he was convicted, (by Confession or Oath of one Witness within

within a Month) shall direct, not exceeding treble Damages, and to the Poor not exceeding 10 s. as the Justice shall appoint, to be levied by Warrant, &c. by Distress and Sale; and if no Distress can be had then to be committed not exceeding one Month, unless he give Bond with Sureties in 10 l. not to offend for the future. 22 & 23 Car. 2. c. 25.

Fish found by a Constable upon a Search-Warrant, on any Person not qualified; forfeits for every Fish not exceeding 10 s. nor under 5 s. to the Informer and the Poor, &c. to be levied by Distress; and if that cannot be had, then to be sent to the House of Correction not exceeding a Month, nor less then ten Days, and to be whip'd and kept at hard Labour. 4 & 5 W. c. 23.

Law Cases.

ff. By the Statute 2 H. 6. c. 15, 'tis enacted, That none shall fasten *Trinks*, or other Nets over Rivers, to the Destruction of the Fry of Fish, or any Manner of Nets, to any Post-Boats, or Anchors, or the like,
to

to stand *continually* Day and Night; on Pain to forfeit 5 *l.* to the King.

12 Rep.
89.

An Information was brought upon this Statute against the Defendant for fastening Nets in the River *Thames* to Boats *Day and Night*, so long as the *Tide* did serve, and did not set forth, that it was *continually* Day and Night; but adjudged, that the Word *continually* in this Statute shall be taken to mean so long as the Nets fastened may stand to take Fish; and so long as the Time of Fishing continueth.

Reynell
v. Cham-
pernoon.
Cro. Car.
228.

In Trespass for taking and *cutting* his Nets and Oars, &c. the Defendant justified, for that he was seised in Fee of a several Fishery in *H. &c.* and that he found the Plaintiff and others trespassing there, and thereupon he seised and *cut the Nets*; and upon a Demurrer to this Plea it was adjudged ill, because the Defendant could not by Colour of a Trespass justify the *Cutting the Nets*, though he might have destroyed them *Damage-feasant*; but since this Case, it is made lawful to destroy such Nets, by Virtue of a Warrant from a Justice of Peace.

In

In Trespass for breaking and entering his Close, and fishing in *separati piscaria sua*, and for taking *his Fish* there, (*viz.*) one hundred Eels; upon Not guilty pleaded the Plaintiff had a Verdict, and entire Damages; but it was moved in Arrest of Judgment that the Declaration was ill, because it was for taking *his Fish*; whereas he cannot have a Property in them, so as to call them *his Fish*, till they are taken, and in his Possession; but adjudged, that he having set forth that they were taken in his *several Fishery*, he hath a Property in them; for no other Person can enter and take them there, if it had been *extra liberam piscariam suam*: The Action would not lie.

The Question at a Trial at Bar 1 Mod. concerning the *River of Wallfleet* 105. was, whether T. S. had a Right of Fishing there, exclusive of all other Persons; and the Lord Chief Justice Hale thus distinguished.

ff. That a Lord of a Manor having the Soil of a private River, 'tis good Evidence to prove that he hath the Right of Fishing, exclusive of all others, and that he who will claim *free Fishing* in such a River, must prove

Child v.
Green-
hill.
Cro. Car.
390, 399,
553.
March
48. S. C.

prove his Right ; but that where a River *ebbs* and *flows*, and is an Arm of the Sea, in such Case the Fishing there is common to all People ; and if an Action of Trespass is brought against any Man for fishing there, 'tis a good Justification for the Defendant to plead that the Place, where the Trespass is supposed to be done, is an *Arm of the Sea*, in which every Subject of the King hath and ought to have *free Fishing* ; that in the River *Severn* there are several Restraints as *Gurgites* ; but that on each Side of the said River, the Soil doth belong to the respective Lords on those Sides, and they have a peculiar Sort of Fishery ; but that the common Fishery belongs to all People ; that the Soil of the River *Thames* is in the King, and that the Lord Mayor of *London* for the Time being, is Conservator of that River, and that it is common to all Fishermen.

Hardres
497.

Trespass, &c. for breaking his Close, &c. the Defendant justified, for that the Place where the Trespass was supposed to be done is in *B.* in which Place he had a Right of Fishing by Prescription ; and upon a Demurrer

murrer to this Plea, it was adjudged not good, because there are several Sorts of Fisheries, (*viz.*) *free Fishing*, *several Fishing*, and *common Fishing*; and he (the Defendant) did not set forth to what Kind of Fishing he had a Right, nor whether it was a Right as appertaining to any Manor or Messuage, but made it a mere personal Thing by this Plea; 'tis true an *Easement* (as a Way) may be claimed without setting forth to what it appertains, and so may a *Liberty*, but an *Interest* cannot; as for Instance, a *Common* cannot, because 'tis an *Interest*, and so is a *Right of Fishing*.

The Defendant was indicted for *The King* taking out of the Pond of T. S. at *v. Wet-*
H. &c. certain Fish called *Carp Fish* wany.
de bonis & catallis ipsius T. S. pro- 1 Lev.
priis; an Exception was taken to this 203.
 Indictment, because it did not set 1 Keb.
 forth how many Fish the Defendant 178. C. S.
 did take; and for this Purpose * * 5 Rep.
Playter's Case was cited, which was 34.
 an Action of Trespass, *quare clausum*
fregit & pisces suos cepit; the Plain-
 tiff had a Verdict and entire Da-
 mages, but the Judgment was stay'd
 for the *Uncertainty of the Number*
and Nature of the Fishes taken; but
 the

the principal Case being upon an Indictment, Damages are not to be recovered, but the Offender is to be fined at the Discretion of the Court, according to the Circumstances of the Fact, and not according to the Number of the Fish he took; 'tis true, in Actions of Trespas the Modern Resolutions have been according to *Playter's Case*; as for Instance, in Trespas, &c. for taking his Fish, not setting forth *what Number, or of what Kind*; the Plaintiff had a Verdict, but cou'd never get Judgment; for the Chief Justice *Hale* was of Opinion, that both the *Kind* and *Number* ought to be set forth; and that where the Plaintiff declares for Fishing in his *several* Fishery, and taking Eels there, 'tis usually said *what Numbers*.

3 Keb.
107.

Burrage's Case.

Howell
v. Reynolds.

Vent. 329,
272. S. P.

In Trespas for fishing in his *several Fishery*, and taking 20 *Busbels of Oysters*, with a *Continuando* the said Fishing from such a Day to the Time of bringing the Action; upon Not guilty pleaded, the Plaintiff had a Verdict, but the Judgment was stay'd upon the Authority of *Playter's Case*, because the Fishing mentioned in the *Continuando* is very incertain, not expressing

sing the *Quantity or Quality of the Fish*; but *Hale Chief Justice* said, that the Courts now were not so strict in the Certainty of Pleading as formerly.

By the Statute 5 *Eliz. cap. 21.* 'tis enacted, That none shall unlawfully break down *Fish-pond Heads*, or take Fish there without Licence of the Owner, under the Penalty of Imprisonment for three Months, and to be bound to the good Behaviour for seven Years.

The Defendants were indicted upon *The King* this Statute, for that they *Vi & cr- v. Mar-* mis, and without Licence and un- shall and lawfully did fish in *quadem piscina* of others. *T. S.* and took and carried away se- 2 Keb. 594. veral Fish in the Night with Nets, against the Form of the Statute 5 *El.* it was held, that if this had been an Indictment at Common Law, it had been ill, because the Words *riotose assemblerunt* were left out, but that it was well enough upon the Statute; however this Indictment was quashed, because of that insensible Word *Piscina*, whereas *Piscaria* is the proper Word to express a Fishery.

Smith v.

Kemp.

2 Salk.

637.

4 Mod.

355. S. C.

Trespass, &c. for that the Defendant with Force and Arms on such a Day, &c. and in such a Place, did fish in his (the Plaintiff's) free *Fisbery*, and did take Fish there, &c. upon Not guilty pleaded the Plaintiff had a Verdict; and it was moved in Arrest of Judgment, that he who had a *free Fisbery* could not maintain this Action, because it was only a Freedom of Fishing with others, and the same as *Cummuni piscaria*, and that such a Grantee had only a Liberty to take Fish, and no Property in them till they are taken; that *libera piscaria* was not like *libera warrena*; for a Grantee of the last might maintain Trespass against any one but the Owner of the Soil, for hunting in his *free Warren*, because that is a Liberty to hunt in his own, or another's Ground exclusive of others; and this Grant the King may make, who is Master of all the Game; but a *free Fisbery* is only a Freedom of fishing with others; but *Holt Chief Justice* held there were three Sorts of Fisheries, (*viz.*) a *several Fisbery*, and he who has such a Fishery, is the Owner of the Soil where the Water doth run; and

and therefore if T. S. should bring an Action, &c. for Fishing therein, the Defendant may plead that 'tis *liberum tenementum* of another; the next is *Libera piscaria*, free Fishery, which is where the Right of Fishing is granted to T. S. in such Case he hath the Property of the Fish, and may bring a possessory Action for them without making any Title; the last is *Communis piscaria*, and this is like the Case of other Commons. See Register 95. in Point.

Trespafs, &c. in which the Plaintiff declared *quare pisces suos cepit in separali piscaria*, upon Not guilty pleaded the Plaintiff had a Verdict; and now it was moved in Arrest of Judgment that the Declaration was ill, because the Plaintiff could not declare for taking *Pisces suos*, unless they had been in a Stew or Trunk; but it was adjudged, that after a Verdict any Thing shall be intended to make the Declaration good.

Taking Fish out of a Net, Trunk, 1 Vent. or Pond is Felony, because they had ^{122.} not their natural Liberty as in *Rivers. Pollexfen v. Crisp.*

Armed

Forest and Forester.

9 G. c. 22. Armed and disguised, and unlawfully taking away, or stealing any Fish out of a River, or Pond, is Felony without Benefit of Clergy; and so it is to break down any Head or Mound of a Fish-pond, whereby the Fish shall be lost.

Forest and Forester.

A Forest properly signifies a great Wood; 'tis defined to be a Place where wild Beasts are kept and enclosed, (*i. e.*) by Metes and Bounds, and not by Pales or Walls, as a Park is; which Metes and Bounds are in some Places Churches, but commonly Rivers and Highways; and therefore 'tis not lawful to hunt or kill the King's Deer in Highways, because they are inclusive Boundaries of Forests.

'Tis called in *Latin Foresta, quasi Ferarum statio*; but Mr. Manwood, who hath wrote a particular Treatise of Forest Laws, tells us,

'Tis a certain Territory of woody Ground, and fruitful Pastures privileged for wild Beasts and Fowls of Forest,

Foreſt, Chaſe and Warren, to reſt and abide in ſafe Protection of the King for his Princely Delight * meered and bounded with unremoveable Marks, * See the Metes and Bounds, either known by Matter of Record or Preſcription, replenished with wild Beaſts of † Venary or Chaſe, and with great Coverts of Vert, for Succour of the ſaid Beaſts, there being certain Laws, Privileges, and Officers belonging only to Foreſts, for the Preſervation and Continuance of them.

Statute 16 & 17 C. 2. c. 16. for the Bounds of a Foreſt, and the Metes thereof. † Venary ſo called

propter Venationem.

There are only two Foreſts in England known by Matter of Record, and theſe are Newforeſt, made by William called the Conqueror, and Hampton-Court Foreſt, made by King H. 8. all the reſt (being formerly 67 in Number) are ſo antient, that no Record or Hiſtory doth mention when they began, or were erected; and therefore they muſt be by Preſcription.

§ This is by Writ iſſued to the Sheriff, who ſhall take an Inqueſt of the Metes and Bounds, and return it into

the Chancery. * 4 Inſt. 319.

G

A Fo-

Forest and Forester.

A Forester is an Officer made by the King's Letters Patents, either in * Fee or for Life; his Business is to preserve the *Vert and Venison*, to attach Offenders against the Laws of the Forest, and to present their Offences at the Court of *Attachments* and *Swainmote*; and generally they are to present all Manner of Offences done in the Forest.

* If in Fee, yet he cannot grant it over without Licence, because 'tis an Office of Trust; and even before such

Licence is granted, there must issue out a *Writ ad quod damnum* to the King, if 'tis granted. 4 Inst. 315.

A Forest strictly taken cannot be in the Hands of a Subject, but only in the Crown, because none but the King hath Power to grant a Commission to a Person to be *Chief Justice in Eyre of the Forest*; but if he grants a Forest to a Subject, and farther grants, that upon Request made in Chancery by the Grantee or his Heirs, he shall have Justices of the Forest, in such Case the Justice hath a Forest in Law, as the Duke of *Lancaster* had the Forests of *Pickering* and *Lancaster*; and the Abbot of *Whitby* had the Forest of *Whitby* in *Yorkshire*; and Prince *Henry* had a Grant

Forest and Forester.

123

Grant of a Forest made by King *Hen.* 2. and King *John*, with all Officers incident to it; to which Place, (*viz.*) to a Forest, there is a peculiar Property annexed of having several Courts, (*viz.*) the *Justice-Seat* every third Year, the *Swainmote Court* three Times in every Year, and the *Court of Attachments* once in every forty Days; which see under their proper Titles.

There are likewise several Officers belonging to a Forest, in order to preserve the *Vert and Venison*, as the *Warden or Keeper*, the *Verderors*, the *Foresters*, the *Agistors*, the *Regarders*, the *Bailiffs* and the *Beadels*; which see likewise under their several Titles.

Before the Making the * Charter * Anno of the Forest, the People were very 9 H. 3. much oppressed by an unlimited *confirmed* Power, which the *Norman Kings* by 1 E. 3. claimed in making Forests; for as by Stat. 3. Law they might enter on the Lands c. 1. of any of their Subjects where *Mines of Gold and Silver* were found; so they claimed the like Prerogative to keep wild Beasts and Game in any Place which they should appoint for that Purpose.

G 2

And

Forest and Forester.

* The
Manner
of making
a Forest.

And before the *Norman*, Kings *Cannutus* the *Dane* who reigned here *Anno 1018*. prohibited all People to enter his Forests *ubicunque eas habere voluerit* ; and in After-ages, when any of his Successors intended to have a * Forest, a Commission was directed out of Chancery under the Great Seal to certain Persons, declaring it was the Will and Pleasure of the King to have a Forest in such a Place ; thereupon they were commanded to view the Ground, and to set out so much thereof, as they should think convenient for that Purpose.

Now by Virtue of this Commission, the Persons therein named would enter on any Man's Lands, and set out Marks and Bounds, without any Recompence or Satisfaction made to the Owners ; and after they had made their Perambulation, and sufficiently viewed and bounded the Lands, they returned the Commission into Chancery ; and by this Means the King was entitled to those Lands by Matter of Record, thus converted into a Forest ; and most of the *Danish*, and all the *Norman* Kings, not only enclosed Forests in this Manner, but punished

punished with the greatest Severity; any Person who should hunt or kill any of the Game there.

Eadmerus a Monk of Canterbury, who lived in the 12th Century, and who wrote the Lives of *William called the Conqueror*, and of his Sons and Successors *William Rufus* and *Hen. 1.* (being an Author of unquestionable Authority) * tells us, that * Lib. 2. the said *Rufus* caused fifty rich Men fol. 48. to be apprehended, and accused them for killing and carrying away his Bucks in such a Forest; which they denying, they were ordered to clear themselves by † Ordeal; and the same Monk tells us, that the afore- † There were two Sorts of Purgations by Ordeal, (i. e.) a Freeholder was to be purged by Loss of a Limb; and in this King's Fire Ordeal, and a Clown by Water Ordeal. they § should be gelt, and their Eyes § This was the Punishment in his Father's Reign. pulled out; but *H. 3.* thought this Punishment too severe, and therefore he appointed that such Convicts should

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should *abjure the Realm*, or be imprisoned for a certain Time, or to pay a Fine

Edw. 1. appointed the like Punishment, but that the Offenders should be free both of Life and Limb.

Henry Knighton, one of the Canons of *Leicester*, and who published an History of *England*, beginning with *William called the Conqueror*, and ending about the latter End of the Reign of *R. 2.* tells us, that *William Rufus* would cause a Man to be hanged for killing a Doe in his Forest, and that he made one pay the Value of 20 s. for killing a Hare, and another to the Value of 10 s. for killing a Coney in his Forest; and *John Brampton*, who was Abbot of *Jorval* in *Yorkshire* in the Reign of *Ed. 2.* and who lived after *Knighton* procured an antient Chronicle, which he gave to his Abbey, beginning with the Coming of *St. Austin* hither, *Anno 588.* and ending with the Reign of *Ed. 1.* in which we are told, that *William called the Conqueror* caused the Eyes of those to be pulled out, who took either a Buck or a Doe in his Forests.

The

The Historians of those Times tell us, that *Newforest in Hampshire* was raised by the Destruction of twenty-two Parish-Churches and Villages, for the Space of thirty Miles together, which they say was so displeasing to God, that several of those Princes, by whom this Destruction was made, came to untimely Deaths within that very Forest, and particularly that *Rufus* himself was shot there by one *Tyrrel*, and that *Richard the Brother of Hen. 1.* was killed there by a Soldier.

But to return, the Severity of punishing Convicts for killing Deer in the King's Forests, being mitigated by *Hen. 3.* as before-mentioned, and not extending to *Life or Limb*, was agreeable to the Charter of the Forest, by which it was * declared, that * Ch. 10.
no Man from thenceforth should loose either Life or Member for killing the King's Deer ; but that if any should be taken in the Act, or convicted for taking Venison, he should make grievous Fine, if he had any Thing wherewith to be fined ; and if not, he was to be imprisoned a Year and a Day ; and after the Expiration thereof he should be discharged, if he

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could find Sureties never to offend in the like Nature; but if not, then to abjure the Realm.

Now before this Charter was made, there was no certain Law to punish those who hunted or killed Deer in the King's Forests; but such Offenders were punished as the King thought fit, which was sometimes by Loss of Eyes, and sometimes by Death; for so it was in the Reign of *Edward the Confessor*, and long afterwards; and these Punishments were inflicted with the greatest Severity as aforesaid.

I shall now proceed to shew the Duty of a *Forester*, who is a *ministerial Officer*, constituted by Letters Patent, to hold his Office in the King's Forests *quam diu se bene gesserit*, who is sworn to watch over the *Vert and Venison*, to attach Offenders against the Laws of the Forest, and to present all Offences, which to his Knowledge, shall be done within his Walk.

Formerly these Officers were made during Pleasure, or for Life, and sometimes in Fee to them and their Heirs;

* Ch. 14. this appears by the * Charter of the Forest, by which 'tis provided, that
no

no Forester *in Fee* shall take *Chiminage*; the Meaning of which is, that Foresters having frequently oppressed the People passing through the Forest, by extorting Toll of them, for Carts and Horses carrying Burthens there, which they called *Chiminage*, and another Toll of every Passenger riding or passing through the Forest, which they called *Pedage*; now by this Charter it was declared, that none but a *Forester in Fee*, paying a Rent to the King for his Bailiwick, should take more then 4 *d. per Annum Chiminage* for a Cart, nor more than 1 *d. per Annum* for a loaded Horse, and but of those People only who came thither to buy Bushes, Timber, Bark, or Coal, to sell again; and they were not to take any Thing of the poorer Sort of Men, who were not able to keep Horses, but carried those Burthens on their Backs to sell again, unless those Things were taken in the King's own Demesnes.

There was another general Complaint in those Days against Persons who dwelt in Forests, that the People were oppressed by a great many unnecessary Officers, who extorted Money from them, and from others who

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had Lands adjoining to Forests ; and this was by keeping Alehouses there, and causing Men to come thither to spend their Money, for fear of their (the Foresters) Displeasure ; and this was called *Scotale* ; this was an Offence inquirable at the Court of *Swainmote*, and at the general Sessions of the Forest, by a Jury of twelve Men ; and the Forester, who was convicted thereof, was certainly fined, and put out of his Office.

So if a Forester, or any other Officer there, by Colour of his Office did oppose any Person, who had a Right to come into the Forest, by compelling him in a clandestine Manner to give some *Hay, Oats, Corn or Pigs*, or to make a Collection of Money, or other Thing, that he may quietly enjoy his Common in the Forest ; this was Extortion by the Forest Law.

The Foresters likewise, and other Persons who had Bailiwicks in Fee, did usually appoint more *Walkers and Underkeepers* than were necessary ; so that the People were oppressed by their Exactions, who executed their Offices for the Maintenance of themselves and their Families, having no
Wages,

Wages, nor any Subsistence, but what they got by Extortion ; therefore it was declared by this * Charter, that * Chap. 7. no Forester or Beadle should make any *Scotale*, or gather any Corn, Lamb, Pigs, Oats, or † Garb, or † This was again enacted by the Stat. 25 Ed. 3. c. 7. make any Sort of gathering whatsoever, but upon Sight or Oath of the twelve Regarders when they shall make their Regard ; and that so many Foresters should be appointed for keeping the Forests, as shall be reasonably sufficient to keep them, (*i. e.*) no more than the Regarders shall think sufficient ; for if they find more Foresters than are convenient, or more than have been usual in former Times, then, upon their Presentment thereof before the Justices of the Forest, they were to be removed, and the Offenders were fined and imprisoned.

So that since the Making this Charter, the Number of Foresters, and other Officers of the Forest, were limited by the Discretion and the Oath of the Regarders, and that was according to the Quantity of Ground, and the Acres in the Forest ; and that if there were several *Walks and Baili-*

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Bailiwicks, there ought to be at least one Forester in every Walk.

§ 21 E. 1. By the § Statute *de malefactoribus in parcis*, 'tis enacted, that if any Forester shall find a Trespasser within his Liberty, intending to do any Damage there, and will not yield himself *after he is called to stand to the Peace*, but continuing to disobey, or doth fly or defend himself by Force and Arms; if such Forester *kill the Offender*, he shall be indemnified, so as he doth not do it out of Malice before that Time, pretending the Person was a Misdoer when he was not; for in such Case he shall be prosecuted at Law, as any other Subject.

* 34 Ed. By another Law called * *Ordinatio forestæ*, 'tis declared, that Foresters shall present at the next Swainmote before the *Verderors*, *Regards*, *Agistors*, and other Officers, all Trespasses done in the King's Forests of Vert, Venison, and Hunting; which Presentments must be on Oath, and then Inquisition shall be made as well by Knights, as other lawful Men near the Place where the Trespass was done; and if any Surchargers shall be found

found of Foresters, they shall be removed and imprisoned.

If any Forester or other Officer Chap. 2.
dies, or is so hindered, that he cannot come to the *Swainmote*, the *Chief Justice in Eyre*, or his Deputy, shall put another in his Place, that an Indictment may be made in Form, except Verderors, who must be chosen by Writ.

No Minister of any Forest shall be Chap. 3.
put upon any Jury to be taken out of the Forest.

No Officer of the Forest shall sur- Chap. 4.
charge it, on Pain to be imprisoned by the *Chief Justice*, or his Deputy; and he who placed them in the Forest shall be punished at the King's Pleasure; and at every *Swainmote* Enquiry shall be made of *Surchargers*, Foresters, and other Ministers there, and of Oppressions done to the People, that Reformation may be had,

None shall be imprisoned for *Vert* 1 Ed. 3.
or *Venison*, unless he is taken in the c. 8.
very Fact, or else indicted according to the Form of the Stat. 34 Ed.
1. and then the Wardens of the Forest shall let him to * Mainprise, (i. e.) * *This is a receiving*
one into Custody, who otherwise would have been committed to the Common Gaol.

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to bail, until the *Eyre of the Forest*, without taking any Thing for his Deliverance ; which if they will not, then the Offender shall have a Writ out of Chancery of old, ordained for Persons indicted to be bailed, till the *Eyre*.

And if the *Warden*, after the Writ is served on him, will not deliver the Person indicted, on Bail put in, the Party grieved shall have another Writ out of the Chancery directed to the *Sheriff to attach the Warden*, to answer his Default before the King on a certain Day ; and then the *Sheriff*, with the Assistance of the *Verderors*, shall deliver the Person indicted upon good Bail put in ; and that in the Presence of the *Verderors*, to whom he shall deliver the Names of the Bail, that they may answer in the *Eyre* before the *Justices*.

And if the *Chief Warden* shall be attainted of this Offence, he shall be awarded to pay treble Damages to the Party grieved, and shall be committed to Prison, and * ransomed at the King's Pleasure.

* *That is,*
shall pay a great Sum for his Pardon.

The

Forest and Forester.

135

The Perambulations of the Forests shall continue as they were bounded in the Time of *Ed. 1.* and every County shall have a Charter thereof; and where they are not bounded, it shall now be done, and a Charter thereof shall be made accordingly.

No Officer of the Forest shall take or imprison any one, for any Trespas in the Forest, without due * In- * 7 R. 2. dictment, unless he is taken *in the c. 3.* *very Fact*; nor shall any Officer compel a Person to enter into any Bond to pay a great Sum to be discharged, and against the Excise of the Forest, on Pain to pay double Damages to the Party grieved, and to be ransomed at the King's Will.

The calling Lands by the Name of a Forest, either in Grants of Offices, ^{2 Cro. 22,} or in other Conveyances, ^{155. in} doth not ^{*the Case of*} make it a Forest; it must appear to ^{Leicester} be so on Record, as by the ^{Forest.} *Eyres of the Justices*, by the *Swainmotes*, by Officers proper to Forests, as *Agistors*, *Regarders*, *Verderors*; and if there are not such Courts and Officers, then 'tis only a *free Chase*, and no Forest; and he who hath a Freehold in such Chase, may sell Wood and Timber there, leaving sufficient Covert for the

the Deer, and may prescribe so to do upon his own Inheritance.

17 Car. 1.
c. 16.

By the Statute 17 Car. 1. 'tis enacted, that the Metes, Limits, and Bounds of every Forest, shall be adjudged to extend no farther than they were commonly known, or reputed to extend in the 20th Year of the Reign of King *James*; and no Place in *England* or *Wales* shall be adjudged a Forest, or within the Bounds of a Forest, where no *Justice-Seat*, *Swainemote*, or *Court of Attachments* have been held; or where no *Verderors* have been chosen, or *Regard* made within *sixty Years* before the first Year of the Reign of King *Car. 1.* but the same Place shall be disafforested, and exempted from the Laws of the Forest.

Provided, That for the better ascertaining the *Metes and Bounds of the Forests*, the *Lord Chancellor* or *Keeper of the Great Seal* for the Time being, shall upon Request of any of the *Peers*, or *Knights of Shires*, or *Burgesses of Parliament*, grant *Commissions* under the *Great Seal* to *Commissioners*, to be nominated by them respectively, or by any of them, to make *Inquisition*, by the *Oaths of Wit-*

Witnesses, concerning the *Metes and Bounds* of any Forests, which were commonly known to be such, in the 20th Year of King *James*, and to return into Chancery the Inquest so taken; and the Sheriffs, &c. of every County where such Inquisition shall be taken, and the *Verderors*, *Foresters*, *Rangers*, and other Officers of the Forest respectively, shall be assisting to the Execution of such Commissions; or where there are no such Officers, or where there are any, and they shall neglect to attend, the Commissioners may proceed without them.

And the *Metes and Bounds* of the Forest so returned, shall not be adjudged to extend farther; and all Places, which shall be without such *Metes and Bounds* so returned, shall be free as if they had never been Part of the Forest, or so reputed.

Provided, That all Grounds disafforested by Letters Patent, or otherwise, since the 20th Year of the Reign of King *James*, shall be excluded and left out of the *Metes and Bounds* of Forests, to be enquired into by the said Commissioners, and are hereby declared to be disafforested; and the
Owners

Forest and Forester.

Owners of Grounds disafforested, shall enjoy Common in the Forest as heretofore.

9 G. c. 21. Armed and disguised, and appearing in a Forest where Deer are kept, is guilty of Felony without Benefit of Clergy.

This is the Substance of all the Statute Laws relating to Forests ; and now it may not be improper to mention the *Seasons of the Year*, according to the Laws of the Forest, proper for the Beasts thereof, (*viz.*) The Season for the *Hart and Buck* begins on *St. John Baptist's Day*, and ends on * *Holyrood-Day* ; and for the *Female*, (*viz.*) the *Hind and Doe* it begins on *Holyrood*, and ends at *Candlemas* ; for the *Fox* it begins at *Christmas*, and continues till *Lady-day* ; for the *Hare* it begins at *Michaelmas*, and continues till *Midsummer*.

* (i. e.)
Holy Cross,
the 14th
Day of
Septemb.

And as for the Names of the said Beasts, a *Hart* is called a *Calf* the first Year, a *Brocket* the second Year, a *Spayard* the third Year, a *Staggard* the fourth Year, a *Stag* the fifth Year, and a *Hart* the sixth Year.

A Buck

Forest and Forester.

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A *Buck* is called a *Fawn* the first Year, a *Pricket* the second Year, a *Sorel* the third Year, a *Sore* the fourth Year, and a *Buck* of the first Head the fifth Year.

Law Cases.

H. Hen. 8. granted a Lease to *T. S. Dyer* 149. of the *Forests of Wayland and Sapley*; in which the Lessee covenanted to keep 100 Deer there, during the Term demised, and at the End thereof to leave the like Number there; and afterwards the King granted the Reversion thereof to the *Lord North*: Adjudged, that by the Grant of this Lease of these Forests, the *Deer* passed to the Lessee, and that the Grantee of the Reversion could not kill them, because that would be to disable the Lessee to perform his Covenant.

Where the King granted the *Herbage* of his Forest, and a Stranger put in his Cattle; adjudged, that the Grantee might either distrain them damage-feasant, or he might have an Action of *Trespas quare clausum fregit*; but he cannot take the Fruit of the Trees, or cut them down. By

22 Ed. 4. By the Statute 22 Ed. 4. 'tis enacted, that where any Person hath Woods in his own Grounds, without any *Forest*, *Chase*, or *Purlieu*, and shall cause the same, or any Part thereof to be cut down with the King's Licence, where such Forests, Chases, or Purlieus are his, (the King's) or without Licence where they belong to others, he may keep them several and enclosed for seven Years next after their Felling; and this is in order to keep out all Manner of Cattle, and to preserve the Springs.

35 H. 8. And by the Statute 35 H. 8. the Owners of Coppices above twenty-four Years Growth, shall preserve the Underwood seven Years after the Felling, from the Destruction of Cattle, by fencing; and where there is a Wood or Coppice where others have Right of Common, the Owner of the Soil shall not cut the same * down, before he and the Commoners shall agree in setting out the fourth Part thereof, to be severally enclosed for the Lord's Use; and that during seven Years next after Felling such fourth Part, the Commoners shall be excluded from commoning therein.

* Except to
his own
Use.

Upon

Forest and Forester.

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Upon these Statutes this Case ha^{8 Rep.}
pened, (*viz.*) the Owner of a Fo^{137.}
rest, in which T. S. had Common, ap-^{Sir Fran-}
pendant, granted all the Woods, and^{cis Bar-}
Underwoods to E. G. except the^{rington's}
Case.

Soil on which they did grow, with
Liberty to enclose the said Woods,
for the Preservation of the Springs,
and to exclude *Beasts of the Forest*
and other Cattle; the Question was,
whether T. S. the Commoner was by
this Means, and by Virtue of the
said Statutes barred to have Common
in these Woods; and adjudged, that
the Statute 22 *Ed.* 4. did not extend
to the Woods of a Subject as these
were; for by the Common Law, he
who hath a Wood in which another
hath Right of Common, cannot en-
close and exclude such Commoner:
Adjudged likewise, that the Words,
Beasts of the Forest, in this Grant
doth not extend to Sheep, but to
Buck, Doe, Roe, Hare, &c.

Now as to *Enclosures* it hath been 2 Cro.
held, that the Owners of Woods in^{155.}
Forests and Chases, in the Hands of^{4 Inst. 298.}
a Subject, may at their Pleasure cut^{1 Inst.}
them down, without View or Li-^{233. a.}
cence of the Forester, but then they
must

Forest and Forester.

must leave sufficient Vert there ; and that Parks which have been laid open to Forests for forty Years, may be enclosed again ; but such Enclosures must be with low Hedges, which may not disturb the Game.

2 Bull. *Quo Warranto* by the King for the
295. Forest of Cleve ; the Defendant
The King pleaded a Grant of the Forest from
o. Bridges. H. 2. under which he claimed by
2 Roll. several mesne Conveyances : Adjudg-
Rep. 189. ed, that no Subject can have a Fo-
S. C. rest, because a *Justice-Seat* is incident
Poph. 150. to it, which is *inter jura Regalia* ;
S. C. and therefore where Prince Henry
Palm. 60, had a Forest granted to him, the King
87. S. C. gave him Power by the same Grant
1 Roll. to make a *Chief Justice in Eyre*,
Rep. 112, and an Authority to keep Courts ;
194. S. C. but this Grant was held void, and
that it ought not to be pleaded, be-
cause being made by King Hen. 2.
it did not appear that it was ever
allowed in *Eyre* ; besides, where the
King grants a Forest to a Subject, it
is no longer a Forest but a *free Chase*,
and the Grantee can have no *Swain-
mote Court*, without a special Autho-
rity from the King.

A Man

Forest and Forester.

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A Man was *fin'd* by the Chief Justice in Eyre, for a Trespass done in a Forest by putting in his Sheep, and was committed for not paying the Fine; all which appear'd upon the Return of an *Habeas Corpus*; and it was adjudged, that by the Forest Law, a Man cannot have *Common of Pasture for Sheep* there, because they bite so close, that they do not leave sufficient Pasture for the Deer; but a Man may have *Common by Prescription for Sheep in a Forest*, because the Statutes concerning Forests are only declarative *antiqui juris*; and therefore, though by the Forest Law *Sheep are not commonable* there, yet a Man may prescribe against the Law, and against those Statutes, as well as he may against the Common Law it self, upon a just and reasonable Cause; and such a Prescription may have a lawful Beginning by the King's Grant.

Adjudged, that where a Man hath *Common in a Forest*, which is afterwards disforested; yet the Right of Common still remains, and that a Man may have a Forest by special Words in the Grant of the King, as to make Officers, and to have a Justice-

Case.

1 Roll.

Rep. 411.

3 Bulst.

213. S. C.

3 Lev.

98. S. P.

Jennings

v. Rock.

Poph.

Justice-Seat and *Swainmote*, and other
 * *Hetley* Courts; * but then he must have a
 60. special Commission to keep such
 Com- Courts; but such Forest shall not be
 min's discharged of Tithes, as it was in the
 Case. Hands of the King, because such a
 Cro. Car. Discharge is only a personal Privilege
 69. S. C. extending to the Crown.

In *Webb's Case* before-mentioned it
 was objected, that it did not appear
 that the Trespass was committed in
 the Forest, for it was alledged to be
 done within the † *Doles* of the Fo-
 † *Dole is* rest, and that it was not set forth
 a Saxon where the *Justice-Seat* was held; but
Word, and adjudged, that the *Doles of the Fo-*
signifies rest shall be intended in some Part
Part. thereof; and let the Justice-Seat be
 kept where it will, since the Tres-
 pass was done in some Part of the
 Forest, that is sufficient.

The Inhabitants of *Rodley* claimed
 Common by Prescription in certain
 Lands in *Sherwood Forest*, which
 were lately enclosed by the Grantees
 of the King; and the Lands of these
 Inhabitants being now *disforested*, the
 Question upon a Bill, and Answer in
 the *Exchequer* was, whether by this
disforested the Right of Common
 was destroyed; and this depended
 upon

Forest and Forester.

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upon the Construction of the Charter of the Forest, and of the Ordinance of the Forest; and by the Opinion of two of the *Barons*, it was held that the Common was gone, but *Hale Chief Baron* doubted; he held, that there were three Sorts of Forests in *England*, (*viz.*) Antient Forests Time out of Mind, and long before *Charta de foresta*, which in Respect to *Magna charta* was called *Charta parva*; then there were *New Forests* made in the Reign of our *Norman Kings*; and a third Sort of Forests, which may be called partly new and partly old, because the antient Boundaries of the old Forests have been enlarged by taking in new Lands, which did not belong to those Forests in former Times; therefore when those Lands so taken in and added to the old Forests were * dis- * Anno * forested, there was a Saying of the 9th H. 3. Right of Common of Herbage in the Forest, to such as had been accustomed to enjoy the same: The Meaning whereof is, that the Lands of several People had been wrongfully added to the Forests in the Reigns of those Kings, and particularly by *H. 2.* who might have a Right of Common in
H the

Forest and Forester.

the Forest; before their Lands were thus afforested; therefore it was but reasonable that when their Lands were disforested by that Stat. 9 H. 3. that the Owners of those Lands should enjoy the same Right of Common in the Forests, as they did before they were disforested.

Afterwards by a *Perambulation* made Anno 12 H. 3. and by another made above fifty Years after that, (*viz.* Anno 10 Ed. 1.) it was found that many Forests were enlarged with other Mens Lands, to the Prejudice of the Owners; and by another *Perambulation* Anno 28 Ed. 1. it was found that other Lands were exempted out of Forests, which did antiently belong to them, and this was to the Prejudice of the King; thereupon, and upon these Grievances on both Sides, the * *Ordinatio Forestæ* was made; by which it was declared by the Assent of all the Parties, that the Disforestations made by those *Perambulations*, whether right or wrong, should stand, and the Lands should be altogether discharged from the Forests; but then the Owners were not to have Common there, unless they had it before their Lands were wrongfully

* 33 & 34
Ed. 1.

fully afforested ; but if such Lands were duly afforested at first, and afterwards wrongfully disforested by some Perambulation, then if the Owners would have them continue disforested, by Virtue of the Ordinance of the Forest, they must loose their Commons.

Besides the *Ordinatio Forestæ* made only a temporary Suspension of the Common Law, (*viz.*) so long as the Lands should continue disforested ; and now by the Statute 17 Car. 1. cap. 16. the Lands cannot be afforested again ; therefore if the Inhabitants of *Rodley* had Common by Prescription in this Forest, it would be hard to take it away where it is rightfully due.

In a special Verdict on an Action Grammar on the Case, the Substance thereof was, that the Waste of *Alimore* is in the Forest of *Sherwood* ; and that the Messuage and Lands mentioned in the Plea in Bar to the Action, are within the *Purliens* of the said Forest ; and that the *Archbishop of York* and his Tenants, *Time out of Mind*, had Right of Common in the said Waste for all Commonable Cattle, &c. but the Jury doubted whether the

mar &
Watson
Lutw.

Defendant could prescribe to have such Common in a Forest, as appertaining to Lands in the *Purlieus*, and so made a general Conclusion ; and upon arguing this Verdict an Exception was taken to the Pleading, (*viz.*) that the Defendant had set forth in his Plea a Prescription in the Archbishop and his Tenants, to have Common of Pasture in the Waste, &c. for all commonable Cattle levant and couchant on the Lands within the *Purlieus* of the Forest, and did not except *Sheep*, or the *Fence-month* ; now by the Word *Commonable*, the Prescription was restrained to such Cattle as were commonable in a Forest, which *Sheep* are not by the Forest Law ; therefore it was adjudged, that this Prescription was not good without excepting the *Sheep* ; but as for the * *Fence-month* it hath been held, that a Prescription for *Common* generally in a Forest, without excepting the *Fence-month*, is good.

† *Certiorari* to the Chief Justice in Eyre to remove a Record into B. R. concerning cutting Wood in the Forest of *Pickering*, in a Place where the Defendant claimed the Soil ; it was objected against granting this

* Trigg v. Turner.

3 Lev. 98.

Jones 285.

Inglefeild's

Case. S. P.

3 Lev.

127.

Bray-

brook v.

Carter.

S. P.

† Duke of

Norfolk

v. Duke of

Newca-

stle.

Sid. 296.

this Writ, that the Court of King's Bench had no Jurisdiction, because they proceed in the Forest according to their own Laws for Offences done there; but ruled, that tho' a *Certiorari* might be granted, yet in this Case it should not, because cutting Wood is an Offence punishable by the *Regarders*; for by the Law of the Forest, the Owner of Woods cannot cut them down without Leave of the King; so they would not grant a *Certiorari* upon a bare Presentment and before Conviction; but yet that the Right of the Party should not be concluded, for he might have his Action at Common Law for the Trespass, or to recover his Right.

In Trespass the Defendant pleaded Keilw. 31. that the Place where, &c. was ad- 2 Roll. joining to the King's Forest of P. Abr. 565. and that T. S. is a Forester in and Coningf- of the said Forest; then he sets forth, by's Case. that the Plaintiff and all those whose Estate he had in the said Place, have used to impale *contigue versus* the said Forest; and that for want of Pales four Deer came out thereof into the Place where, &c. and that the Defendant as Servant to the said T. S.

Forest and Forester.

and by his Command, pursued them, and hunted them back into the Forest; and upon a Demurrer this was adjudged a good Plea, because it was lawful for the Defendant to enter and drive the Deer back into the Forest.

The Laws of the Forest differ from the Common Law, and are private Laws, and therefore must be pleaded; and by those Laws, he who receives a Malefactor within the Forest, knowing him to be so, is a Principal himself; but by the Common Law he is only an Accessary.

W Joles
277.
Moor's
Case.

An Inhabitant in the *Forest of Windsor* was presented at a *Justice-Seat*, for suffering three Rood of Wood to be spoiled with Cattle; who shewed, that the Fence, thro' which the Cattle came and made the Spoil, belonged to T. S. and so the Spoil was made in his Default; but this being within the Forest, it was held that he, whose Woods are in Danger to be spoiled, ought to require the other to make up the Fences; and if he refuse, then he must do it himself, and bring an Action on the Case against him who ought to do it; but 'tis not so at Common Law.

There

There is likewise a Difference between a Nufance by the Forest Law, and a Nufance by the Common Law; for by the one a Nufance is againſt the Vert and Veniſon, by the other 'tis what tends to the Hurt of the Subject in general.

So *Hue and Cry* is not to be made by the Forest Law, but againſt Offenders in the *Vert or Veniſon*, and not to be purſued out of the Boundaries of the Forest. 4Inſt. 294.

For.

Though the Common Law warrants the Hunting of Beaſts of Prey in other Men's Grounds, as the Fox and the Badger; yet 'tis not lawful to dig the Ground to unearth them, as appears by the following Caſe.

ſ. In Treſpaſs for entering on and digging his Land; the Defendant pleaded in Bar, that the common Voice was, that *quædam melis* a noifome Vermin called a Badger, was on the ſaid Land, and had done much Harm there, and therefore he (the Defendant) came thither with his Dogs and hunted him; and in Purſuit

Gedge or
Gueſt v.
Mimms.
2Cro. 321.
2 Bulſt.
60. S. C.

of the said Badger he followed his Dogs to kill it, and found him in the Plaintiff's Ground which he digged, and killed him there, and filled up the Trench with Earth again, *quæ est eadem transgressio & foditio*; and upon a Demurrer this was adjudged an ill Plea; for there is a Difference where a Man enters on the Land of another without his Leave to find such Vermin, and where he enters in Pursuit of them when found; for in the first Case 'tis unlawful, but in the other Case 'tis justifiable; besides this Plea is ill, for the Defendant cannot justify the Digging; he might have found other Means to kill the Badger.

Poph.
163. in
Miller
and Cow-
dry's Case.

In Trespass for hunting and breaking his Hedges, the Case was, a Man unkennelled a Fox on his own Lands, and his Hounds pursued the same Fox into the Grounds of the Plaintiff; and if his Hedges were broke, it was done involuntarily, in Pursuit of the Fox; this was adjudged a good Plea, and that he might lawfully pursue the Fox, because 'tis a noisome Creature to the Publick.

Justi-

Justification in Trespass where the
Defendant was sued, and justi-
fied for hunting and killing
Foxes and Badgers.

ET prædict' T. S. quoad totam
transgressionem prædictam in præ-
dicto loco vocat' B. cum pertinentiis
superius fieri supposit' præter fractio-
nem clausi prædicti & foditionem so-
li prædict' dicit quod ipse non est
culpabilis & de hoc ponit se super
patriam, &c. & quoad fractionem
clausi prædict' & foditionem soli in
prædicto clauso vocat' B. superius fie-
ri supposit' dicit quod prædict' (the
Plaintiff) actionem suam prædictam
inde versus præd' (the Defendant) ha-
bere non debet quia dicit quod infra
prædictum clausum vocat' B. ante
prædict' tempus quo transgressio præ-
dict' superius fieri supponitur fue-
runt ibidem quædam latibula (vocat'
Earths) & antra vocat' Dens, quibus
taxi Anglice Badgers & Vulpes ex-
isten' animalia noxia & quæ usi fue-
runt occidere Agnos ac alia animalia
beneficial' & necessaria pro victu &
sustentatione hominum seipsos interra-
verunt, & idem T. ulterius dicit
H. 5 quod

quod ipse (on such a Day and Year) in quodam clauso terra vocat' W. invenit tramitem Anglice the Track duorum taxorum existen' noxia animalia ut præfertur & qua usi fuerunt Agnos ac alia animalia beneficial' occidere & eadem tramite prædict' taxorum sic invent' a prædict' clauso vocat' W. in prædictum clausum vocat' B. prædicto tempore quo, &c. fugavit & venatus est in quo quidem clauso prædict' duo taxi prædicto tempore quo, &c. in eisdem latibulis & antris adtunc seipsos interraverunt per quod idem T. S. prædicto tempore quo, &c. ad occidendum & destruend' eos sic subter terram ut præfertur seipsos interran' in solo prædict' clausi vocat' B. adtunc & ibidem fodit & taxos illos e latibulis & antris prædict' in prædict' clauso existen' prædicto tempore quo, &c. fodit & eos adtunc & ibidem occidit & destruxit prout ei bene licuit Quæ quidem fugatio & venatio taxorum prædict' in prædict' clauso vocat' B. sunt eadem fractio clausi prædict' & fuditio soli prædict' unde prædict' (the Plaintiff) superius versus eum queritur & hoc paratus & verificare, &c.

For.

Furz.

If any Person shall burn *Furz* between the 2d Day of *February* and c. 23. the 24th Day of *June* in any Year, on any *Hills, Moors, Heaths, Forests, Chases*, or other Wastes, he shall be committed to the House of Correction for any Time not exceeding one Month, nor under ten Days, and to be whip'd and kept to hard Labour.

Game

Game and Game-keeper.

4 & 5 W.
c. 23.

ALL the Laws now in Force relating to the Preservation of the Game, shall be put in Execution.

Game-keepers in their respective Limits may resist Offenders in the Night-time, and shall be indemnified, as if the Fact had been done in a *Forest, Chase, Park, or Warren.*

Snares and other Instruments of Destruction of the Game, kept or used by any Person not qualified; the same Conviction and the same Forfeiture, as for keeping a *Ferret*; which see in that Title.

5 Annæ
cap. 14.
made perpetual by
9 A. c. 25.

Any Lord of a Manor may under his Hand and Seal appoint a Game-keeper, and impower him to kill any Game; but if under Colour of such Power to kill or take Game for the Use of his Lord, he shall sell or dispose thereof, without the Consent or Knowledge of such Lord; and shall upon his Complaint be convicted before a Justice, such Game-keeper shall

Game and Game-keeper.

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shall be committed to the House of Correction for three Months, and there kept to hard Labour.

Lord of a Manor shall not appoint 9 A.C. 25. more than one Game-keeper in one Manor, with Power to kill and destroy the Game, and his Name shall be entred with the Clerk of the Peace without Fee, who shall give him a Certificate thereof paying 1 s. and if any Game-keeper, whose Name shall not be thus entered, or who is not otherwise qualified by Law, shall kill any *Hare*, *Pheasant*, &c. he shall for every Offence incur such Forfeitures as are inflicted by the Statute against * Higlers and Car- * 5 Annæ riers. cap. 14.

which is

5 l. for every *Hare*, &c. to the Informer and the Poor.

No Game-keeper shall be made with Power to kill the Game, unless he is a Person qualified by Law so to do; or unless he is properly the *Servant* of the † Lord of the Manor, or im- † 3 Geo. mediately appointed by him to kill c. 11. the Game for his (the Lord's) sole Use and Benefit; and if any Person (other than as aforesaid) shall by Colour of any Deputation take and kill the

Game and Game-keeper.

the Game, or keep *Dogs, Hays, Funnels*, or other *Engines* to destroy the Game, he shall incur such Forfeitures as by the said Statutes 5 & 9 *Anna*, are to be recovered and applied in like Manner; and the said Acts, and all other Statutes for the Preservation of the Game are confirmed.

8 Q. c. 19. By the Statute 8 *Geo.* 'tis enacted, That wheresoever any Person shall for any Offence hereafter to be committed against any Law now in Being, for the better Preservation of the Game, be liable to pay any pecuniary Penalty upon Conviction before any Justice or Justices of the Peace; it shall be lawful for any other Person whatsoever, either to proceed to recover the said Penalty by Information and Conviction before a Justice, &c. or to * sue for the same by Action of Debt in any Court of Record; and if the Plaintiff recover, he shall have *double Costs*.

* The Action must be brought before the End of the next

Term after the Offence done.

The

The Form of a Declaration in Debt
upon the Statute 8 Geo.

Wilts. ss. **T**. S. qui tam pro pau- 8 G. c. 19.
peribus parochiæ de
Biddifon in Com' prædict' quam pro
seipso in hac parte sequitur queritur
de Laurentio Roger in Custod' ma-
reschalli mareschal', &c. de pl'ito quod
reddat prædict' pauperibus & eidem
T. S. viginti solidos legalis monetae
Magna Britannia quos eisdem paupe-
ribus & T. S. qui tam, &c. debet &
injuste detinet pro eo videlt' quod
cum per quendam actum in Parlia-
mento Domini nostri Georgii nunc
Regis Magnæ Britannia apud Westm'
tent' anno regni sui octavo edit' inter
alia inactitat' fuit authoritate ejus-
dem Parliamenti quod ubi aliqua
persona pro aliquo offens' postea com-
mitti contra aliquam legem adtunc
existen' pro meliori præservatione præ-
dæ Anglice the Game obnoxia esset
solvere aliquam pecuniariam pœna-
litatem super convictionem coram a-
liquo justiciario vel aliquibus justiciariis
pacis legal' esset pro aliqua
alia persona quacunque vel procedere
recuperare præd' pœnalitatem per infor-
mationem

mationem & convictionem coram Iudiciis pacis vel seſtare pro eadem per actionem debiti in aliqua Curia de Recordo in qua null' effoin' vadiatio legis vel proteſtio ſive plus quam una interlocutio Anglice an Imparlance allocaretur, & quod ſi querens recuperaret duplic' haberet cuſtagia prout per eundem actum plenius liquet & apparet Et idem T. S. qui tam, &c. ulterius dicit quod per alium actum in parlamento nuper Domini noſtri Gulielmi tertii nuper Regis Angliæ apud Weſtm' in Com' Midd' tent' annis regni dicti nuper Regis quarto & quinto edit' inter alia inactitat' fuit authoritate ejusdem parlamenti ultim' mentionat' quod ſi aliquis inferior occupator Anglice Tradesman apprentitius vel aliqua perſona diſſoluta Anglice diſſolute Perſon venaret aucuparetur piſcicaret vel alites accipitre inſectaretur niſi in ſocietat' cum Magiſtro talis apprentic' per legem qualificat' foresfaciet non exceden' viginti ſolidos una medietas inde informatori & alia medietas pauperibus parochiæ ubi offens' comiſſ' erit prout per prædictum actum ultimo recitat' plenius liquet & apparet, Et præd' T. S. in facto dicit quod

quod post editionem statut' prædict' scilicet vicesimo secundo Decembris Anno Regni Domini Regis nunc decimo prædict' Laurentius existen' persona dissoluta, (Anglice a dissolute Person) apud H. in parochia prædicta die & Anno ultime mentionat' illicite venebatur & sequebatur canos leporarios & venaticos in & super terras prædicti Thomæ qui tam, &c. in parochia prædict' quæ quidem venatio est offens' commiss' post editionem statut' prædict' & contra legem adtunc & adhuc existen' pro meliori præservatione præd' Anglice the Game & ratione inde prædict' Laurentius obnoxius esset solvere pœnalitatem pecuniariam super convictionem coram Justiciar' pacis unde actio accrevit eisdem pauperibus parochiæ de Bid-dison prædict' ubi offens' prædict' commiss' fuit & prædict' T. S. qui tam, &c. ad exigend' & habend' de præfat' Laurentio viginti solidos legalis monete prædict' per præd' Laurentium vigore statut' prædict' forisfact' prædictus tamen Laurentius licet sæpius requisit' prædict' viginti solidos præfat' pauperibus & eidem T. S. qui tam, &c. non solvit sed illos prædict' pauperibus & eisdem
T. S.

Game and Game-keeper.

T. S. qui tam, &c. hucusque solvere omnino contradixit & adhuc contradicit unde idem T. S. qui tam, &c. dicit quod deteriorat' est & damnum habet ad valentiam quinque librarum & inde producit sectam, &c.

4 & 5 W.
c. 23.

The Form of a Declaration in an Action of Trespas, upon the Statute 4 & 5 Will. for hunting; wherein if the Plaintiff recover, he shall have Damages and full Costs.

Wilts ff. **T** S. queritur de Lauren-
mar' marescal' Domini Regis coram
ipso rege existen' pro eo videlicet
quod prædict' Laurentius existen'
* If he is an inferior Tradesman, then say existen' inferior occupator, Anglice an inferior Tradesman, viz. a Clothier: If he is an Apprentice, then say existen' Apprentitius & non ad-
* persona dissoluta Anglice a dissolute Person vicesimo secundo die Decembris Anno regni Domini nostri Georgii nunc Regis Magnæ Britanniae decimo Vi & armis clausum ipsius T. S. in parochia de Biddeson in Com' præd' fregit & intravit & adtunc & ibi-
tunc in societate magistri sui per legem debite qualificati.

dem

dem in & super terras ipsius T. S. in parochia prad' voluntarie & illicite venebatur & canes leporarios & venaticos in venatione prædict' sequebatur, & herbam ipsius T. S. ad Valentiam quinque librarum in eodem clauso tunc crescen' pedibus ambulando conculcavit & consumpsit & alia enomia ei intulit contra pacem dicti Domini Regis nunc & contra formam statuti quoad venationem prædict' nuper edit' & provis' & ad damnum ipsius T. S. decem librarum & inde producit sectam, &c.

Greyhound. See Tit. Dogs.

Grig.

He who burns Grig between the 4 & 5 W. 2d of February and the 24th of June, c. 23. in any Year, on Hills, Moors, Heaths, Forests, Chases, or waste Grounds, shall be committed to the House of Correction for any Time not exceeding a Month, nor under ten Days, and be whip'd and kept to hard Labour.

This

Grouse.

This Clause was inserted for the better Preserving the red and black Game of Grouse, commonly called Heath-cocks, or Heath-colts.

Grouse.

5 A. c. 14. Red and black Game of Grouse are called Heath-cocks or Heath-poults, and the Carrier, Higler, Chapman, Inn-keeper, Victualler, or Ale-house-keeper, who hath any such Game in their Custody, (unless in the Hands of a Carrier sent to him by some Person qualified to kill the Game) shall upon Conviction before a Justice, upon the Oath of one Witness, forfeit y^{e} L^{e} one Half to the Poor of the Parish where the Offence was committed, the other to the Informer, to be levied by Distress, by Warrant of that Justice before whom convicted; and for want of Distress to be sent to the House of Correction for three Months without Bail for the first Offence, and four Months for every other Offence.

Any Person destroying, felling, or buying any such Grouse or Heath-game; and within three Months making

king a Discovery of any Higler, Chapman, Inn or Alehouse keeper, or Victualler, who hath bought, sold, or had the same in his Possession, or offered to sell it, so as one be convicted; the Discoverer shall be discharged of the Penalties, and receive the same Benefit as the Informer might have done.

Guns.

The first Statute which I find relating to the Qualifications of those who may keep Guns, was made Anno 33 H. 8. by which 'tis enacted, *That he who hath not in his own, or his Wife's Right to their own Uses, or in the Right of another Person, to their Uses, Lands, Annuities, or Offices, to the Value of 100 l. per Annum, shall not shoot in any Gun, or use or keep it in his House or elsewhere, on Pain to forfeit 10 l.*

That no Person shall shoot in, carry, keep or use, or have in his House or elsewhere, any *Hand-Gun*, other than such as shall be a Yard long in the Stock, or Pistol less than three Quarters of a Yard in the Stock, under

der the Penalty of 10 *l.* and every Person having Lands of 100 *l.* may seise and take away a Hand-gun under that Length, and within twenty Days after the Seifure, he may break and destroy it; if not, he forfeits 40 *s.* for every Gun not broken; but after 'tis broke, the Seifor may retain it to his own Use.

He who hath not Lands, &c. of that yearly Value, shall not carry on the Highway, or elsewhere on a Journey, any Gun charged, except in Time of War, under the Penalty of 10 *l.*

No Person shall shoot in a Hand-gun, at any Thing at large, within a City or Market-Town, or within a Quarter of a Mile thereof, except at a Butt, or in Defence of his Person or House, under the Penalty of 10 *l.*

* But a No Person shall command his *
Servant by *Servant* to shoot in any Gun at any
the Oom- *Thing*, except at a Butt, or in Time
mand of *of War*, on Pain of 10 *l.*
his Master
may use
his Gun, (not prohibited by this Act) so as he shoot at
no Fowl, or Deer, or other Game.

The

The Forfeitures incurred by this Act, are to be divided between the Crown and the Prosecutor.

But People in Cities and Market-Towns may keep and shoot in any Gun at *Butts* only, so as the Gun is of that Length as aforesaid.

Offender against this Act may be brought by any Person before the next Justice; who upon due Examination and Proof, may commit him to Prison, there to remain till he have satisfied the Penalty.

Where the Conviction is at the Sessions, the whole Forfeiture is to be levied to the Use of the Crown; but when in a Leet, then 'tis to be divided between the King and the Prosecutor.

Forfeitures arising by this Act shall be sued for by the King within one Year, &c. and by a common Person within six Months, otherwise they shall be lost.

By the Statute 3 Jac. 'tis enacted, 3 Jac. 1. That a Person not having 40 *l.* per cap. 13. *Ann.* in Lands, or 200 *l.* in Goods, or some enclosed Ground, used for Deer or Conies, worth at least 40 *l.* per *Annum*, shall not use any Gun to kill any Deer or Conies; if he doth,
it

it shall be lawful for any Person having Lands worth 100 *l. per Ann.* to take such Gun from the Person, and convert it to his own Use.

22 & 23

C. 2. c. 25.

And by the Statute 22 & 23 *Car.* 2. 'tis enacted, That the Lords of Manors, and other Royalties, (but not under the Degree of an Esquire) may under their Hands and Seals give Authority to one or more Game-keepers to seise all Guns used within their Manors, by Persons prohibited by this Act to use the same; and such Game-keeper may, by a Warrant from a Justice, search the Houses of any Persons so prohibited, and who shall be suspected to keep Guns, and seise them for the Use of the Lord of the Manor, or otherwise destroy them.

He who hath not Lands, or some other Inheritance in his own, or in his Wife's Right, of 100 *l. per Ann.* or for Life, or Lease for ninety-nine Years of 150 *l. per Ann.* other than the Son and Heir of an Esquire, or other Person of an higher Degree, and Owners or Keepers of Forests, Chases, or Warrens stock'd with Deer or Conies, in respect of the said
Fo-

Forests, &c. are declared to be Persons not allowed to keep any Guns.

But Game-keepers may shoot and kill Game for their Master's Use. 5 A. c. 14.

There was another Statute prohibiting any Person under the Degree of the Lord, to shoot in any Hand-gun with *Hail-shot*, or with more Pellets than one; but this Statute is now repealed. 6 & 7 W.
is a Re-
peal of 2
& 3 Ed.
6. c. 14.

Law Cases upon the Statutes before-mentioned:

An Indictment was exhibited against the Defendant for keeping *diversa tormenta, Anglice Guns, carentia longitudine secundum formam statuti*; but it was quashed, because the Indictment ought to set forth the Length of the Guns, and that they were a Yard long. 2 Roll.
Abr. 81.

The Defendant being brought before a Justice of Peace, upon a Warrant against him for shooting in a Gun; and upon Examination and Proof, being convicted thereof, he was committed till he should pay one Moiety to the Crown, the other to the Informer; and the Justice ha-

I

ving

* See the
Form
thereof in
this Title.

† 33 H. 8.
c. 6.

The King
v. San-
ders.
1 Vent.
33, 39.
Sid. 419.
S. C.
1 Sand.
262. S. C.

ving made a * Record of the Con-
viction, it was certified into B. R.
upon the Return of an *Habeas Cor-
pus*; and adjudged, that if the
† Statute is rightly pursued, no Court
could discharge the Offender without
paying the Forfeiture.

A Conviction was certified into
B. R. against one for *shooting in an
Hand-gun*, not being qualified ac-
cording to the Statute 33 H. 8. by
which Statute the Justice of Peace
hath Authority to commit the Offen-
der upon due Examination and Proof;
and now it was insisted for the De-
fendant, that the *Proof* of this Of-
fence ought to be made by a *Jury*,
and not by a Witness before a Justice
of Peace; but it was adjudged, that
in this Case *Proof* might be made by
Witnesses, and not to a Jury, and that
no Writ of Error lies upon this Con-
viction.

Then it was objected, that this
Conviction appeared to be before such
a Justice of Peace *ad pacem in Com'
præd' conservandum necnon ad diver-
sas felonias transgressionēs, &c. audi-
endum*, omitting the Word *assignat'*;
'tis true, it ought to be so in Re-
turns

turns on *Certiorari's* for removing Indictments taken at the Sessions ; but in Convictions of this Nature 'tis no Fault to omit the Word *Assign'*, because 'tis known to the Court that the Statute gives Jurisdiction to the Justices; however the Indictment was quashed.

The Defendant was convicted before a Justice of Peace for keeping a Gun, not having 100 *l. per Annum* 3 Mod. according to the Statute 33 Hen. 8. and now the Record of this Conviction being removed into B. R. it was objected, that the Words in the Indictment were *non habuisset 100 l. per Annum* generally, but did not set forth when, for he might have 100 *l. per Annum* when he kept the Gun, though not at the Time when he was convicted ; but it was answered, that the Word *habuisset* shall relate to all Times, and 'tis as much as to say *nunquam habuisset* ; and the Indictment concluding *contra formam statuti*, that Conclusion must explain any doubtful Words ; but it was adjudged, that this being a Conviction before a Justice of Peace, the Time when the Offence was committed should be alledged with the utmost

Certainty, (*viz.*) that the Defendant on such a Day and in such a Year had not 100 *l. per Annum*; and for this Reason the Indictment was quashed.

The King
v. Wolfe.
2 Keb.
582.

The Defendant was indicted upon the Statute 33 *H. 8.* for shooting in a *Hand-gun*, and killing two *Lepos* (instead of *Lepores*;) it was objected that this Indictment was ill, because it did not set forth that the Defendant was not worth 100 *l. per Annum*; but this Objection was not allowed, because if he was worth so much, he might have shewed it in Order to his Acquittal; but this Indictment was quashed for these Reasons, (*viz.*) because it set forth that the Defendant killed two *Lepos*, when it should have been *Lepores*; and for that the Caption was *ad Sessionem pacis Domini Regis*, and did not say *nunc Regis, &c.*

The King
v. Luel-
ling.
Shower's
Rep. 48.

The Defendant was convicted upon the said Statute 33 *H. 8.* for *having a Gun* in his House, when the Words of the Statute are against *keeping a Gun* in his House or elsewhere, and probably this Gun might be lent to the Defendant; therefore this being upon a penal Statute, the
Words

Words thereof ought to be pursued, for which Reason this Conviction was quashed.

It hath been a Question whether *The King* an Indictment will lie upon the Statute 33 *H. 8. in the Sessions* for shooting in a Gun; 'tis true, the Justices have Power by their Commission to punish Offences against the Peace; but shooting in a Gun is not such an Offence, 'tis only the Defect of the Qualification of the Person which makes it criminal.

Nota: It was said in *Bullock's Case*, that a single Justice cannot convict upon the Statute 33 *H. 8.* unless the Offender is brought before him *instantly* after the Offence committed.

Two Indictments, one was preferred against the Defendant for keeping a Gun, and the other for shooting in it; but they were both quashed, because the Disability of the Person was not rightly set forth.

The Plaintiff brought an Action of Bowkby Trespass against the Defendant for entering his (the Plaintiff's) House, and taking away his Gun; the Defendant justified by Virtue of the Statute 22 & 23 *Car. 2.* setting forth

v. Allop.
4 Mod. 49.

v. Bullock.
4 Mod. 146.

H. 9 W.
in B. R.

v. Williams.
Lutw.
502.

22 & 23
C. 2. c. 2.

forth that the Lords of the Manors and other Royalties may *depute Game-keepers*, who by Virtue of such *Deputation* may seise Guns within the Precincts of their Manors, &c. and that such Game-keepers, or any other Person may, by a Warrant from a Justice, search the Houses of Persons suspected to keep Guns, and seise them for the Use of the Lord of the Manor; that Sir *E. W.* was seised in Fee of the Hundred of *Burton*, and of a Court-Leet there, &c. and that the Defendant by a Warrant of a Justice entred into the Liberty of *W.* to search in the Manors of *M.* and *W.* and within the Precincts of the Court-Leet and Hundred afore-said, which were within the Liberty of *W.* and that Sir *E. W.* was Lord of the said Manor, and that the Plaintiff was not qualified to keep a Gun; and being suspected to keep one, the Defendant entred his (the Plaintiff's) House, which was within the said * Hundred, and within the Precincts of the Court-Leet, and Liberty of *W.* where he (the Defendant) found the said Gun and seised it, &c. and upon a Demurrer to this Justification it was held good, though

* It should be within the said Manor, because the Gun was seised to the Use of the Lord of the Manor.

though there was no Occasion for the Defendant to set forth all this Matter, because he acted under a Warrant of a Justice of Peace, therefore he might have pleaded the general Issue; but if he had justified as a Game-keeper only, and without a Warrant, in such Case he must plead specially.

Nota: At a Justice-Seat held for Wheat-the Forest of Windsor, one *Wheatly* ly's Case. was fined 50 s. for carrying a Gun W. Jones in the Forest to kill the Deer. 275.

The Form of a Conviction upon
the Stat. * 33 H. 8. before one * Ch. 6.
Justice.

Wilts ff. **M**Emorand' quod hoc decimo tertio die Februarii instantis Anno regni Domini nostri Georgii nunc Regis magnæ Britannia decimo venit coram me W. M. armigero proximo Justiciar' pacis dicti Domini Regis ad pacem suam in Com' prædict' conservand' assignat' quidam T. S. de H. in Com' prædict' firmarius & adtunc & ibidem super sacramentum suum dixit & deposuit quod M. M. de H. prædict' in Com' prædict' Yeoman primo die Januarii

I 4 anno

anno regni dicti Domini Regis nunc
 decimo supradicti apud H. prædicti in
 Com' prædicti custodivit quoddam tor-
 mentum vocat' an Hand-gun & ad-
 tunc & ibidem in tormento prædicti
 cum pulvere bombardico & plumbeis
 pellet' Anglice Hail-shot onerat' illicite
 displodebat Anglice did shoot contra
 formam statut' in hujusmodi casu edit'
 & provis' eodem M. M. nunquam ha-
 bente in jure suo proprio aut in
 jure uxoris suæ ad usum ipsius M. M.
 nec aliqua alia persona sive aliquibus
 aliis personis haben' vel habenti-
 bus ad usum ipsius M. M. terras tene-
 menta feoda annuitat' seu officia ad
 annualem valorem Centum librarum
 & quia prædicti M. M. existen'
 attachiat' & conducti (Angl' brought)
 coram me præfat' W. M. prox' Justi-
 ciar' pacis per dictum T. S. pro offens'
 prædicti & onerat' cum eadem in for-
 ma prædicta eandem offens' non po-
 tuit dedicere ideo consideratum est per
 me prædicti W. M. proximum Justiciar'
 pacis quod idem M. M. forisfaceret
 & solveret summam decem librarum
 juxta formam statuti prædicti cujus
 quidem summæ decem librarum me-
 dietas solveretur ad usum Domini
 Regis & altera medietas inde solvere-
 tur

tur præfat' T. S. existen' primo
conveiator' (Angl' Bringer) dict' M. M.
coram me præfat' Justiciar' pacis pro
offens' prædict' juxta formam statuti
prædict' & quod idem M. M. com-
mitteretur ad Gaolam Com' præd' ibi-
dem remanere quousque solveret præd'
summam decem librarum ad usus
præd' secundum formam statuti præ-
dict'.

Hampton-Court Chase.

4 Inst.
301.

KING *Hen.* 8. intending to make a Forest about his House at *Hampton-Court*, assigned and limited several Grounds for that Purpose, extending over the Lands of several Freeholders and Copyholders within the Manors, Townships, and Villages of *East and West Mulfey, Walton, Esber, Weybridge*, and Part of *Chobham*; but finding he could not do it, (as formerly it had been done) without the Consent of the respective Owners of those Lands; therefore by an Indenture bearing Date 1 *October* in the 29th Year of his Reign, and made between him of the one Part, and *Sir Richard Page*, and several other the Owners of the said Lands on the other Part; it was agreed between them, that the Lands thus intended for a Forest should be called *Hampton-Court Chase*, but that it should have the like Liberties, Jurisdictions

rifdictions and Preeminences, Laws, Statutes and Officers, as any other Forest or Chase in the Realm; and that all Offences done therein, should be punished as if done in any Forest or Chase whatsoever; and by this Indenture the King did covenant with the said Owners of the Lands, that they might fell and take their Woods, Groves and Coppices at Pleasure, without any View of the Officers, and that they might make Hedges and Fences about their Corn to keep out the Deer; and for a Recompence to them, that the third Part of the Fee-Farm Rent of every Freeholder, should from thenceforth be abated, and the Moiety of the Fine of every Heir on his Admittance to a Copyhold, &c. which Indenture being recited in an Act of Parliament made in the same Year, it was accordingly enacted.

Hares.

Hares.

13 R. 2.
c. 13. Either Hunting was not so much in Use, or *Poachers* were not so common 350 Years since, as they are now; for the first Statute I find made to preserve *Hares*, was *Anno* 13 R. 2. by which it was prohibited to any Layman not having 40 s. *per Ann.* and to a Priest not having 10 l. *per Ann.* to kill or destroy a Hare, on Pain to be imprisoned for a Year if they do.

14 & 15
H. 8. c. 20. About 130 Years afterwards another Statute was made, by which it was enacted, that no Person whatsoever should *trace, destroy, and kill any Hare in the Snow*, upon Pain of forfeiting 6 s. 8 d. for every Offence; and by this Statute, the Sessions and Stewards of Leets had Power to enquire of such Offenders, and to assess the Penalty; which if done at the Sessions, then the King was to have it; but if done in the Leet, then it belonged to the Lord thereof.

Above

Above 100 Years after the Statute 1 Jac. 1. last mentioned, another Statute was ^{c. 27.} made, (*viz.*) that every Person convicted upon his own Confession, or by the Oath of two Witnesses before two Justices, to have taken or *killed a Hare*, shall by the said Justices be committed to Prison without Bail, unless he pay *for every Hare 20 s.* immediately to the Use of the Poor where the Offence was committed, or where he was apprehended; and after the Commitment for one Month, he shall be bound before two Justices, with two sufficient Sureties in 20 *l.* a-piece, with Condition never to offend in the like Nature again.

And that he who sells a Hare, or buys one to sell again, shall forfeit for every Hare 10 *s.* to be divided between the Prosecutor and the Poor.

The Quarter-Sessions, and two or more Justices out of Sessions, have Power to hear and determine the aforesaid Offences.

The next Statute relating to this ^{4 & 5 W} Matter was made about 80 Years ^{c. 23.} after the last, (*viz.*) *Anno 4 & 5 W.* ^{made perpetual by} by which it was enacted, That a ^{9 A. c. 25.} Constable, &c. by a Warrant of one Justice, *searching for and finding a Hare*

Hare in the House or Outhouse of any suspected Person not qualified, must bring the Offender before a Justice; and if he doth not give a satisfactory Account how he came by the Hare, or produce the Person of whom he bought it, or some credible Person to attest the Sale thereof, he shall be convicted by the Justice, and forfeit not exceeding 10 s. nor under 5 s. for every Hare; one Moiety to the Informer, the other to the Poor where the Offence was done; to be levied by Warrant, &c. by Distress and Sale; and for want of a Distress, then the Offender shall be committed to the House of Correction not exceeding one Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

§ A. c. 14. By the Statute 5 *Anna*'tis enacted, That where a Hare is found in the

* Unless
sent by some
Person
qualified.

Custody of an Alehouse-keeper, * Carrier, Chapman, Innkeeper, or Victualler, or he who shall buy, sell, or offer to sell any Hare, shall be brought before some Justice where the Offence was committed; and upon View or Oath of one Witness, he shall be † convicted, and forfeit for every Hare 5 l. one Half to the Informer, and the other

† This
must be
within 3
Months
after the
Offen. e.

other to the Poor of the Parish where the Offence was done ; to be levied by Distress and Sale, by Virtue of a Warrant of one Justice ; and if no Distress can be had, then to be committed to the House of Correction for three Months for the first Offence, and four Months for the next.

By the Statute 9 *Ann. selling or exposing to Sale any Hare* by a Person not qualified in his own Right, Forfeiture is 5 *l.* to the Informer and the Poor ; the Conviction must be upon View, or on Oath of two Witnesses before one Justice, within three Months after the Offence done ; the Forfeiture is to be levied by Distress and Sale, &c. by Virtue of a Warrant of one Justice ; and if no Distress can be had, then to be sent to the House of Correction for three Months, &c.

If a Hare shall be found in the Shop, House, or Possession of a Person not qualified in his own Right to kill the Game, the same shall be adjudged an *Exposing to Sale*.

And if any Person shall take, kill, or destroy a Hare in the *Night-time*, he shall likewise for every Offence incur the like Forfeitures as aforesaid,
and

and to be recovered by the same Means.

Law Cases.

Sutton v. Moody. The Chief Justice *Holt* delivered it for Law in *Sutton's Case*, that where a Man starts a Hare in another Man's Ground, and kills it there, 'tis the Child and Hare of the Owner of the Ground, because he had a local Property in the Hare; but if 'tis hunted into the Ground of another, and killed there, in such Case 'tis the Hare of the Hunter.

2 Salk.
556.
See postea
Child and
Green-
hill's Case.

That a Hare is his in whose Ground it sits whilst it remains there, for the Reason before-mentioned; and if 'tis started in the Ground of the Owner, and followed by him in hunting it, and killed in the Ground of another, 'tis still the Hare of the Owner of the Ground where it was first started, because of the fresh Pursuit; but if one starts a Hare in another Man's Ground, and hunts and kills it, he is subject to an Action of Trespass, tho' 'tis an Action which is seldom brought, because 'tis a very frivolous Action; and for this he cited *Mich. 12 H. 8. fol. 9 b.* but now this Action is revived

Hare-pipes. Hawking.

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vived by a late Statute, which may be seen under Title *Game* and *Game-keeper*.

Hare-pipes.

Hare-pipes kept or used by a Person not qualified ; the same Conviction and the same Forfeiture as for keeping a Ferret ; which see under that Title.

Hawking.

Hawking is an Exercise or Sport, which was in the last Age very much used in *England*, and by some Men of Quality now ; it was none of the *Roman Sports*, but invented about 1200 Years since, and first mentioned by *Julius Firmicus*, who lived about the latter End of the 4th Century.

'Tis a Recreation more used amongst the *Turks*, than any other People in the World ; and one Mr. *Shirley*, an *Englishman*, who travelled into *Persia*, and there married the King's Daughter, tells us, that the King and the Noblemen took a great Delight in training

Hawking.

training up Sparrows to fly after and catch Butterflies, but that they had a great many Hawks to pursue other Game ; that the Greatest of all were in *Muscovy*, where they reclaimed Eagles to fly at Foxes and Deer ; and that one of those Eagles were sent as a Present to Queen *Elizabeth*.

There are several Books written about Hawks, and particularly as *Bale* tells us, that in the Reign of *H. 6.* one *Julia Barns* wrote three Books, one of *Hawking*, another of *Hunting*, and the Third of *Fishing* ; all which Recreations she recommended to the Exercise of the Gentry in *England*.

Fuller's
Worthies,
P. 4.

In former Days the Breed of Hawks was more common here than it is now ; for Dr. *Fuller* tells us, that King *John* being at War with *Leo-line Prince of Wales*, Anno 1197. took the *Bishop of Bangor* Prisoner in his own Cathedral, and enjoined him to pay 300 Hawks for his Ransom, which he might do at that Time, because the Men of *Norway* (from whence we have the best Hawks) did under *Magnus* their General possess themselves of the *Ile of Angle-sea* ; and there were many Aeries of
Hawks

Hawks and Hawking.

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Hawks in *Pembrokeshire*; but the same Author mentions it as a Wonder, that about 400 Years afterwards an *Aery of Lanners* were found in *Sherwood Forest*, which came from *Saxony*; and being old, and not able to fly at the Game, met with some *Lannerets* there where they bred, and proved as excellent Hawks when reclaimed, as those which came from *Germany*. pag. 315.

Hawks and Hawking.

And certainly this is a very noble Recreation, for in former Days several Persons held their Lands by the personal Service of carrying a *Gerfalcon* every Year before the King, when he was pleased to recreate himself with those Sort of Falcons; and particularly one * *W. H. of Stanton* in *Oxfordshire*, held as much Land there by this Service, as was worth 4 *l. per Annum*, in the Reign of *Ed. 1.* in *W. Harepl'itis Coron. Anno 13 Ed. 1. Rot. 37.* court, in whose Name Lands have been held there ever since the Conquest.

So

Pl'ito Co-
ron' 10
Ed. 1. So one *Robert de Fort* held Lands
in *Cumberland*, by keeping the King's
Aeries of Goshawks in a certain Place
in that County; and the Lord *Grey*
of *Wilton* held the Manor of *Aetor*
in *Bucks*, by keeping a Gerfalcon for
the King; for which Reason that Fa-
mily had for their Badge a Falcon
sitting on a Glove.

34 Ed. 3.
c. 22. A Hawk taken up must be deli-
vered to the Sheriff, who after Pro-
clamation in some Market-Town, shall
deliver it (if challenged) to the right
Owner.

If the Hawk was taken up by a
mean Man, and not challenged after-
wards within four Months, the She-
riff shall retain the Hawk, satisfying
the Person for taking it up; but if
taken up by a Man of an Estate
who might keep a Hawk, the Sheriff
shall restore it to him, upon answer-
ing the Charge of keeping the Hawk.

37 Ed. 3.
c. 19. He who steals and carries away a
Hawk, not observing the aforesaid
Statute 34 Ed. 3. shall be a Felon.

Chart.
Forestæ,
c. 14. By the Charter of the Forest, every
Freeman might have his *Aeries* of
Hawks, *Eagles* and *Hérons* in his
own Woods in the Forest; and every
Man

Man might hawk in his own Grounds without Licence, unless prohibited by some Act of Parliament; and this he might do at his Pleasure, because 'tis only a Recreation to him.

* My Lord Coke in his 3 Inst. tells * 3 Inst. us, that the aforesaid Statute 37 Ed. 97.

3. extends only to *long winged Hawks*, and not to *Goshawks*; and that it is not material, whether they have *Ver-vels* on, or not, so as they are really reclaimed; but before that Statute was made, it was Robbery to take either a *long winged or short winged Hawk* from the Perch, or from the Party; but it was not Felony to find and conceal them, before this Statute.

He who carries a Hawk of † *Eng-lish* Breed forfeits it, and none shall take, kill, or bear away any *Goshawk*, † *Eyessse*, Tassel, Lanner or Lanneret, or Faulcon, from the Coverts where they use to breed, upon Pain of forfeiting 10 l. to be divided between the King and the Prosecutor; the Conviction is to be before two Justices, &c.

11 H. 7.
c. 17.
† *Eyessse*,
Goshawk,
Tassell,
Lanner,
Lanneret,
or *Faulcon*.

He who brings an *Eyessse Hawk* from beyond Sea, shall have a Certificate under the Customer's Seal where he

Hawks and Hawking.

he lands; or if out of *Scotland*, then under the Seal of the Lord Warden, or his Lieutenant, testifying that she is a Foreign Hawk, or forfeits the Hawk.

23 Eliz.
c. 10.

Hawking in standing Corn, eared or podded, unless 'tis in his own; and before 'tis cocked or shocked, forfeits 40 s. to the Owner of the Corn, to be recovered in any Court of Record; and the Sessions and Stewards of Leets may hear and determine this Offence; and any Justice may take Bond with Sureties for the Appearance to answer it at the Sessions, if the Offence is not before determined at the Assises or Leet.

7 Jac. I.
c. 11.

Any Person convicted by his own Confession, or by the Oath of two Witnesses before two Justices, to have hawked at, or destroyed any *Pheasant or Partridge*, betwixt the first Day of July and the last Day of August, shall be committed for one Month without Bail, unless he forthwith pay to the Use of the Poor where the Offence was committed, or he apprehended, 40 s. for every Time so Hawking, and 20 s. for every *Pheasant or Partridge* so destroyed

stroyed or taken ; but this Offence must be prosecuted within six Months after 'tis done.

Law Cases.

In Trespass for striking and killing Vincent *accipitrem suum*, upon Not guilty *v. Disney.* pleaded the Plaintiff had a Verdict ; *Cro. Car.* but it was moved in Arrest of Judgment that the Declaration was ill, because the Plaintiff did not set forth what Sort of Hawk it was, (*viz.*) whether a *Goshawk* or a *Lanner*, &c. for the Word *accipitrem* in the Declaration is the *Genus*, and therefore the Plaintiff ought to shew of what *Species* the Hawk was ; besides, he did not alledge that the Hawk was * *reclaimed*, for it being a Bird of * *Trover* Prey, and *feræ naturæ*, no Man can *lies for a* have a Property in it, unless it is *Hawk re-* *reclaimed* ; but adjudged, that the *claimed ;* Declaration was good, it being in *for by the* *Trespass*, in which a Man may de- *Vervels the* *Owner* *clare upon his Possession*, without *may be* *known.* shewing what Sort of Hawk it is ; *14 Eliz.* neither is it necessary in this Action *Dyer in* to shew that the Hawk was *Spencer's* *ed, Case.*

ed, as 'tis in *Trover*, where the Plaintiff must shew a Property in the Thing he demands ; as for Instance :

Lister v.

Hone.

Cro. Car.

390.

March

12. S. C.

Trover, &c. for a *Ramish Hawk* ; upon Not guilty pleaded the Plaintiff had likewise a Verdict in this Action ; and it was moved in Arrest of Judgment that this Declaration was not good, because the Plaintiff had declared for a *Ramish Hawk*, which is a Hawk living *inter Ramos*, and by Consequence *feræ naturæ* ; and when it flies away, it hath not *animum revertendi* ; and therefore *occupanti conceditur*, which is this Defendant's Case ; for which Reason the Plaintiff should have set forth in his Declaration that the Hawk was reclaimed ; and it was adjudged accordingly.

Hays.

Hays.

By the Statute 13 R. 2. which ^{13 R. 2. c. 13.} takes Notice that divers Artificers, Labourers, Servants and Grooms, did use to hunt in Parks and Warrens on Holidays, when good Christian People were at Church; it was amongst other Things enacted, That no Person who hath not 40 s. *per Annum* shall keep *Hays* to destroy Deer, on Pain of Imprisonment for a Year.

By another Statute made *Anno* 22 ^{22 & 23 Car. 2. c. 25.} 'tis enacted, That if any Person not qualified shall keep *Hays* to take *Conies*, *Pheasant*, or *Partridge*, the same may be seised by a Game-keeper, who may enter the * Houses * ^{By a} of suspected Persons to search for *Warrant* them; and if found, they may be ^{of one Ju-} seised to the Use of the Lord of the *Manor*, or destroyed.

Hays kept by a Person not quali- ^{4 & 5 W. c. 23.} fied to kill the Game, and who shall not give the Justice a good Account how he came by the same, or produce the Party of whom he bought them in some convenient Time, or some credible Person to make Oath

K

of

of the Sale thereof, he shall be convicted by the Justice, and forfeit not under 5 s. nor more than 20 s. one Moiety to the Informer, and the other to the Poor of the Parish where the Hays shall be found, to be levied by a Warrant of the Justice by Distress and Sale; and for Want of Distress, to be sent to the House of Correction not exceeding a Month, nor less than ten Days, there to be whip'd, and kept to hard Labour.

9 A. c. 25. If any Person between the 1st of July and 1st of September shall by Hays, &c. drive and take any Water-Fowl in Places of Resort for wild Fowl in the moulting Season; and being convicted thereof by one Justice where the Offence shall be committed; and that by the Oath of one credible Witness, shall forfeit 5 s. for every Fowl to the Informer and the Poor, &c. to be levied by a Warrant of that Justice before whom convicted, and for Want of Distress to be sent to the House of Correction not exceeding one Month, nor less than fourteen Days, there to be whip'd and kept to hard Labour; and the Justice shall cause Hays to be

Heath and Heath-cock

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be seised, and to be destroyed immediately in his Presence.

Heath and Heath-cock.

In Order to preserve the Breed of 4 & 5 W. Heath-cocks and Heath-colts, no Person shall on Hills, Moors, Heaths, Forests, or Chases, burn any Grigg, Ling, Heath, Furz, Gors or Fern, between the 2d of February and the 24th of June yearly, on Pain to be committed to the House of Correction not exceeding one Month, nor under ten Days, there to be whip'd and kept to hard Labour.

Heath and Heath-game.

Heath-game or Grouse found in 5 A. c. 14. the Custody of an Alehouse-keeper, * Carrier, Chapman, Innkeeper, or * Unless Viſtualler; or he who shall buy, sell ^{sent to} or offer the same to Sale, shall be ^{him by} brought before some Justice of Peace ^{some Per-} where the Offence was done; and ^{son quali-} upon View or Oath of one Witness ^{fied.} before one Justice, within three Months

K 2

after

Heath and Heath-game.

after the said Offence, shall be convicted, and forfeit for every Heath-game 5 *l.* one Half to the Informer, and the other to the Poor of the Parish where the Offence was done, to be levied by Distress and Sale, &c. by Virtue of the Warrant of one Justice; and if no Distress can be had, then to be sent to the House of Correction for three Months for the first Offence, and four Months for the next.

He who shall destroy, sell, or buy any Heath-game, and within three Months afterwards discover any Ale-house-keeper, Carrier, Chapman, Inn-keeper or Victualler, so as he shall be convicted of this Offence; such Discoverer shall be discharged of the Penalty, and have the Benefit of the Informer.

Cutting Heath in Order to burn it into Ashes, or he who shall burn it into Ashes upon the Ground, in the Forest of *Sherwood*, or on any Waste or Land in the County of *Nottingham*, without Licence from the Owner of the Soil, forfeits 10 *s.* and the Person buying the Ashes forfeits likewise 10 *s.* for every Peck, one Moiety

to the Poor, and the other to the Informer; and the Officers of the Forest, and the Owners of the Lands where the Offence was committed, may take away to their own Use, the Instruments used to the Purposes aforesaid; the Party being convicted before one Justice upon Oath, and not paying the Penalties, shall be sent to the House of Correction for a Month, (unless the Penalties are sooner paid) and kept to hard Labour.

Burning Heath in Forests is a very old Offence; for I find that the Inhabitants of that Part of *Surrey*, which is within *Windsor Forest*, were fined 100 *l.* in the Reign of *Hen. 2.* for burning Heath in that Forest, because such Burning destroyed the Deer.

By the Statute 9 *Ann.* 'tis enacted, 9 A. c. 25. That he who killeth or *exposeth a Heath-game to Sale*, not qualified in his own Right, shall forfeit 5 *l.* one Moiety to the Poor, the other to the Informer; the Conviction must be upon View, or on the Oath of one Witness before one Justice within three Months after the Offence, &c. the Forfeiture is to be

Heath and Heath-game.

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Heron.

levied by Virtue of a Warrant of one Justice by Distress and Sale; and if no Distress can be had, then to be sent to the House of Correction for three Months.

And if any Heath-game shall be found in the Shop, House, or Possession of a Person not qualified as aforesaid; the same shall be adjudged *an Exposing to Sale*.

If any Person shall take, kill, or destroy any Heath-game *in the Night*, he shall likewise for every Offence incur the like Forfeiture as aforesaid, and to be recovered in the same Manner.

Heron.

19 H. 7.
c. 11.

About two hundred Years since, a Statute was made, that none should take an *old Heron*, though on his own Grounds, on Pain of forfeiting 6 s. 8 d. nor a young Heron on Pain of 18 s. for which Forfeiture any Person might sue by Action of Debt, or otherwise.

And any two Justices in Sessions might examine Offenders of this Nature,

ture, and commit them to Prison upon Conviction, till they had satisfied the Forfeiture, of which the two Justices were to have the tenth Part.

Every Person convicted upon his ^{1 Jac. 1.} own Confession, or on the Oath of ^{cap. 27.} two Witnesses before two Justices, to have killed or taken a Heron, shall be committed to Prison by the said Justices, without Bail, unless he immediately pay to the Use of the Poor where the Offence was done, or where he was apprehended, 20 s. for every Heron so killed or destroyed; and after he hath been committed for one Month, he shall be bound before two Justices, with two sufficient Sureties in 20 l. a-piece, with a Condition never to offend in the like Nature again.

Herrings. See Fish.

Hunting.

This is an Exercise very much commended by learned Men in all Ages ; of which I shall give a few Instances.

* In Cy-
ropædia.

§. * *Xenophon* that great Philosopher and Historian, who was commonly called the *Grecian Bee*, tells us, that Hunting is the Gift of the Gods, and after him † *Plato* the Chief of the *Academicks* was of the same Opinion ; and because he would make the most of this noble Exercise, he divided it into three Parts ; (1.) by *Land*, which is hunting the *Hare* ; by *Water*, for he tells us *Fishing* is a Sort of Hunting in that Element ; and lastly by *Fowling*, which he calls Hunting in the Air.

Maximus Tyrius a platonick Philosopher, who lived in the 2d Century commended Hunting, because it kept Men in Health, which the *
30, 15. wise Man tells us, is above all Gold and Treasure, *Absque te nemo beatus* ; and † *Langius* the learned Canon of
† Epist.
59. lib. 2. *Leige*, who lived in the 15th Century, was of the same Opinion, (*viz.*)
that

that 'tis a princely Sport, as well for Health as Pleasure ; in which most of the Nobility in *Europe*, and in all the World are delighted.

In the next Century *Paulus Jovius*, that famous Historian, in his Description of *Britain*, calls Hunting the Exercise of Noblemen, in which they took so much Delight, that they spent most of their Time in the * Country, as if they had no * Nobili- other Way to prove themselves Gen- tas fere tlemen ; and lastly our famous † Chi- omnes fa- rographer calls Hunting and Hawking, stidit urbes, & so much used here, *Hilares Venandi liberiori labores.* cælo gua- der, gene-

risque dignitatem una maxime venatione & faulco- num aucupiiis tuetur. † Camden in *Staffordshire*.

Upon the whole Matter, Hunting is an Exercise which requires Fleet- ness, Scent and Strength in the Dogs ; the Fleet Hounds are called in *Latin Petronii* ; and Dr. Fuller tells us, Dr. Ful- that in his Time a *Dutchman* came ler's Wor- hither ; and though a Man of the thies, p. Gown, and in publick Business, yet 150. he diverted himself a whole Season in hunting in *Lincolnshire*, and was so well pleased with the Sport, that the

Hunting.

Time soon passed away : He tells us, that *petrunculi illi qui vestigiis eorum non minus celeriter quam sagaciter instant haud facile trihorio minus leporem aliquam defatigant ut in Lincolnienſi montium æquijugi tractu aliquoties ipſe Vidi.*

Sed premit inventas non inventura latentes

Ille feras, quæ petroniis bene gloria conſtat.

'Tis a Recreation and Pleasure, which is common for any Man to use in his own Grounds, unless restrained by some particular Law, of which the first is, (*viz.*) * That he who hunts in a Forest, Park, or Warren in the Night-time, or disguised in the Day-time with Visards, shall by Warrant, &c. be brought before a Justice of Peace to be examined; and if he conceals the Fact, and 'tis afterwards proved upon him, 'tis Felony; but if confesses it, then 'tis only finable at the Sessions; and Rescuing the Execution of such a Warrant is Felony.

* 1 H. 7.
c. 7.

† 3 Inst.
76.

My † Lord Coke, in his Comment on this Statute, tells us, that 'tis a general Law, and extends to all Persons,

sons, as well to Women as to Men ;
 (but we do not often meet with
 Women Hunters, though *Diana* is
 the Goddess of hunting) and that to
 hunt *disguised in the Day-time*, is e-
 qually punishable as hunting *in the*
Night, because the Offender cannot
 be known ; but this Statute doth not
 extend to hunting in *Chases*, because
 they are not named therein, nor to
Forests, Parks, or Warrens, which
 are not really so, but only so re-
 puted.

The same great Lawyer treating of 4 Inst.
 the Forest Law, was of Opinion, 308.
 that *Spiritual Persons* are prohibited
 by the Canon Law to hunt, for which
 he cites *Lindwood de clerico venatore*.
 'Tis true by the Laws of King *Ed-*
gar, Anno 959. whom the Monks
 extol so much for his Religion, a Priest
 must not hunt, hawk, or * drink * *Drinking*
 too much, but mind his Study, as be-^{too much}
 comes a Man of that Order ; yet by ^{was}
 the Common Law, they may hunt ^{brought in}
 by the
 Danes ;

and it seems by this Prohibition, that the Priests in those
 Days were guilty of this Vice ; and therefore, that it
 might be totally suppressed, this King caused a Mark to
 be made in all drinking Pots, and a Penalty for drink-
 ing above the Mark.

for

Hunting.

for their Recreation, in Order to make them fitter to perform their Office and Duty.

23 Eliz.
cap. 10.

By the Statute 23 *Eliz.* Hunting is prohibited in standing Corn, eared or podded, unless in the Grounds of the Hunter, nor till the Corn is shock'd or cock'd, on Pain of forfeiting 4 s. to the Owner of the Corn, to be recovered at the Sessions or Leet; and any Justice may take a Recognizance with Sureties, for the Appearance of the Offender at the next Sessions, if the Matter is not determined before, either at the Assizes or the Leet.

Law Cases.

Bennet v.
Talbot.
1 Salk.
212.

Jf. Trespafs for *entring his Close, and treading down his Grass and Corn*, and hunting there, the Defendant being an *inferior Tradesman*, (*viz.*) a Clothier; and the Plaintiff concluded his Declaration *contra pacem, &c. & contra formam statuti inde edit' & provis'*; upon Not guilty pleaded the Plaintiff had a Verdict, and it was moved in Arrest of Judgment, that the Words *contra formam statuti* go to the whole Declaration

ration, whereas *the Entring his Close, and treading down his Grass and Corn*, are not contrary to any Statute, but only the *Hunting*; and when that is done by an inferior Tradesmen, the Statute 4 & 5 Will. encreases the 4 & 5 W. Forfeiture to 5 l. or to any other Sum c. 23.

not exceeding 20 s. and besides, it gives the Party grieved an Action of Trespass, in which he shall recover his Damages and *full Costs*; but adjudged, that where a Statute encreases the Penalty, or deprives a Man of that Liberty, which he had by the Common Law, if the Plaintiff will declare upon such a Statute, he must bring his Case within it, and then conclude *contra formam statuti*; otherwise his Declaration will be ill, and this was * *Penhallo's Case*; but where there is no Statute in the Case, if ^{3 Cro. 231.} ^{4 Leon.}

49. S. C.

* *Penhallow was indicted upon the Statute 5 & 6 Ed. 6. for drawing his Dagger in the Church at B. against T. S. but did not set forth that it was with an Intent to strike him, (so did not bring the Fact within the Statute) and for that Reason it was held void in all; and having concluded this Indictment contra formam statuti, it could not be good for an Assault, (which is an Offence at Common Law) because it plainly appeared to be an Indictment on this Statute.*

the

Hunting.

the Plaintiff conclude *contra formam statuti*, it shall not make his Declaration ill ; for 'tis only Surplusage, and that was * *Ward's Case*.

* 1 Vent.
103.

'Tis true in the principal Case, *Hunting* is only within the Statute ; and though in a grammatical Construction, the Words *contra formam statuti* will go to the other Trespasses, which are not prohibited by any Statute ; yet in a legal Construction, those Words shall be applied only to Hunting, which was really within the Statute ; and as to the rest, they shall be rejected as Surplusage.

Monkton
v. Pashley
2 Salk.
638.

Trespass for breaking his (the Plaintiff's) Close, and entring and hunting there on such a Day, *continuando* the Trespass as to the Hunting at divers Days and Times, from the Day of the Trespass, &c. to such a Day ; the Defendant pleaded Not guilty, upon which they were at Issue, and the Plaintiff had a Verdict ; it was moved in Arrest of Judgment, that Hunting is a Recreation which could not be laid with a *Continuando*, because both Men and Dogs must have some Rest from that Sport ; 'tis true, there

there are several Facts which are permanent in their Nature, and those properly lie in Continuance; but there are other Trespasses which terminate in themselves, and cannot be continued, as killing a Mastiff, &c. but adjudged, that Hunting is not an Act which terminates in it self, and therefore it may be laid with a *Continuando* at divers Days and Times, between such a Day and such a Day, &c.

Inferior Tradesman. See Apprentice.

Of a Justice in Eyre, and of the Court of Justice- Seat in the Forest.

32 H. 8.
c. 35.

JUSTICE of the Forest, who is likewise called *Chief Justice in Eyre*, is a Lord by his Office, who hath an absolute Authority to hear and determine all Offences committed against the *Vert and Venison*, and generally against all the Laws of the Forest; and by the Statute 32 *H* 8. he may, by a Writing under the Seal of his Office, make as many Deputies as he will; and the Persons so deputed, shall have the like Authority as he himself.

There are two of these Chief Justices, and no more in *England*; one whereof hath Jurisdiction over all the Forests *on this Side Trent*, and the other over all Forests *beyond Trent*.

The chiefest Point of their Jurisdiction consists in 16 Articles of the Charter, called *Charta de Foresta*, Anno 9 *H*. 3. and the Court where the

Chief Justice in Eyre sits to exercise this Jurisdiction, is called the *Justice-Seat* of the Forest, held once in three Years, and not oftner, which Court may be kept at any Place out of the Forest; and when 'tis held, the King usually appoints some of the * Judges * ^{4 Inst.} to be Associates to the Chief Justice ^{315.} in Eyre, who with them determines *omnia placita, &c. Forestæ*, and these are called *capitales Justiciarii Forestæ*, and they are *Capitales* in respect of the Verderors and others, who have judicial Places, but inferior to them. 'Tis true, that by the Charter of the Forest 'tis provided, that the *Attachments* for Pleas, as well for green Hue as Hunting, shall be presented by the Foresters to the Verderors; and being enrolled by them, and enclosed under their Seals, they must be presented to the *Chief Justices of the Forest*; but 'tis to be observed, that there is but one Chief Justice of the Forests on this Side *Trent*, and he is stiled *Justiciarius itinerans Forestarum, &c. citra Trentam*; and there is another Chief Justice who is stiled *Justiciarius itinerans omnium forestarum, &c. ultra Trentam*; so that there are but

two

Justice in Eyre, &c.

two Chief Justices of the Forests in England.

Before the Making this Charter of the Forest, the Inhabitants of the County who did not dwell in the Forest, but who had Lands or Tenements within the Boundaries thereof, and those who claimed any Liberties, Franchises, or free Customs therein, were bound to appear before the *Chief Justice in Eyre*, and his Associates at this Court, upon a general Summons for that Purpose, which was only a Precept directed by the *Chief Justice*, to the Sheriff of the County where the Forest was, commanding him to summon the Lords Spiritual and Temporal, and the Knights of the Shire, and the Tenants and Freeholders, &c. and that he (the Sheriff) should make Proclamation thro' the Body of the County, both in Fairs and Markets, and all other publick Places, that all Persons claiming any Liberties within the Forest, should appear at the Court there on a certain Day, to shew what Manner of Liberties they claimed.

But it being very inconvenient, for those who lived in remote Places from
the

the Forest, to appear, &c. upon such a general Summons; therefore it was ordained by this * Charter, that those * Ch. 2. who dwell out of the Forest, from thenceforth should not come thither upon a common Summons, unless they were impleaded, or were Sureties for some other Person, who had been attached for some Offence against the Laws of the Forest.

But the chief Reason of making these Articles was, that King *Hen. 2.* having converted the Lands and Woods of several of his Subjects into Forests, to which Lands, &c. he had no Manner of Right, and the same being afterwards disafforested, and restored to the right Owners, or their Heirs; therefore it was provided by this Charter, that such Owners who formerly lived in the Forest, might not appear at the Court of Justice-Seat, when their Lands were no longer any Part of the Forest; but that all other Persons, who had any thing to do therein, as well spiritual as temporal, were bound to appear at this Court upon a general Summons; and the *Abbot of Westminster*, and one *Jeffery Lucy* a great Lord in that Reign,

Justice in Eyre, &c.

Reign, were fined for not appearing upon such Summons.

This *Justice-Seat*, or *Court of the Chief Justice in Eyre*, is a *Court of Record*; and the *Chief Justice* hath a local Authority either by himself or his *Deputy*, to hear and determine all Pleas and Causes arising within *Forests*, *Parks*, and *Warrens* within the Forest, and all *Claims of Liberties*, *Franchises*, and *Privileges* therein, such as to have *Parks* or *Warrens*, there to be quit of *Assarts* and *Purprestures*, the Privilege of cutting down his own Wood, without View of the Forester; and all *Claims of Leets*, *Hundreds*, *Felon's Goods*, *Waifs*, *Estrays*, *Fugitives*, &c. the Privilege of killing *Hares*, and other *Beasts of Chase* in the Forest, to have Woods *infra metas forestæ*, but to be out of the Jurisdiction thereof.

This Court may be proclaimed to be held within the Forest on such a Day, and at least forty Days before the Sitting thereof, 'tis usual to send out two Writs of Summons, one directed to the Sheriff of the County as before-mentioned, and the other directed *Custodi forestæ Domini Regis*,
 &c.

Justice in Eyre, &c.

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&c. vel ejus locum tenenti in eadem,
&c. which last Writ consists of two Parts, first to summon all the Officers of the Forest, and that they bring with them all the Records, &c. and secondly, all Persons who claim any Liberties or Franchises within the Forest, and to shew by what Authority they claim the same.

After the Court is sate, the Chief Justice may adjourn it to any Place within the County, and he may likewise take Recognizances any where; and a Presentment or an Indictment found by the Jury (but not in the Swainmote) may be traversed, because only *found by one Jury*.

The Proceedings are *de hora in horam*, and the Defendant may plead *instante*; and if an erroneous Judgment should be given, the Record may be removed into *B. R.* by Writ of Error, which Court is above all Eyres.

Leap.

Leap.

4 & 5 W.
c. 23.

HE who keeps a Leap, Piche, or other Engine to catch Fish, may be convicted, and forfeits as in Title Nets, (*viz.*) being found upon a Search-Warrant in the Possession or Houses of Persons prohibited and suspected, shall be seised and kept to the Use of the Seisor, or be destroyed.

Licence.

Licences are of two Sorts, (*viz.*) a Licence of Profit, and a Licence of Pleasure; he who hath the one may justify for himself and his Servants, but he who hath the other can only justify for himself; therefore where a Licence was given to the Master to hunt in a Park, &c. the Servant cannot justify the Hunting there, though by his Master's Command; because a Licence only to hunt is a Thing of Pleasure, and personal to him who hath

Licence. Ling.

215

hath it, strictly extending to him and to no other, and therefore cannot be * communicated to another; but a * Bring. Licence to hunt, kill and carry off a ^{loe vers.} Deer, is a Licence of Profit, and in ^{Morris.} such Case the Master may bring his ^{1 Mod.} Servants or others to hunt, &c. and ^{210.} he to whom a Licence is given must take Care not to abuse it, or to exceed his Authority; for if he doth, he will be a Trespasser *ab initio*, and shall be punished as if he never had a Licence.

Ling.

He who burns *Ling* between the ^{4 & 5 W.} 2d of *February* and the 24th Day of ^{c. 23.} *June* in any Year, on *Hills, Moors, Heaths, Forests, Chases* or *waste Grounds*, shall be sent to the House of Correction not exceeding one Month, nor under ten Days, there to be whip'd and kept to hard Labour.

No Person shall cut *Ling* in order ^{5 A.c. 14.} to burn it, or shall burn the same into Ashes upon the Ground in the *Forest of Sherwood*, or on any waste Land in the *County of Nottingham*,
without

Lowbels.

without Licence from the Owner of the Soil, under the Penalty of 10 s. one Moiety to the Poor, and the other to the Informer; the Conviction must be upon Oath of one Witness before one Justice; and not paying the Penalty, shall be sent to the House of Correction for a Month, and kept to hard Labour, unless the Penalty is sooner paid.

Lowbels.

Low in *Saxon* signifies a *Flame of Fire*, and *Lowbellers* are such who go in the Night with a *Bell and a Light*; at the Sight whereof *Larks* and other Birds which sit on the Ground are stupified, and so easily covered with a Net, and taken.

By the Statute 23 *Eliz.* 'tis prohibited to kill or take any Pheasant or Partridge, with any *Net or Engine in the Night-time*, on Pain to forfeit for every Pheasant 20 s. and for every Partridge 10 s. which if not paid within ten Days after Conviction, the Party shall be imprisoned for a Month without Bail, and give Bond with good Sureties before some Ju-

Justice, not to offend in the like Kind for two Years after the Date thereof.

The Forfeiture shall be recovered in any Court of Record, and divided between the Lord of the Liberty where the Offence was committed, and the Prosecutor; but if the Lord will dispence with his Part, then the Poor of the Parish shall have it, to be recovered by the Church-wardens.

Justices of Assize, Sessions, and Stewards of Leets, have Power to hear and determine this Offence; and one Justice may examine the Offender, and bind him over with Sureties to appear at the next Quarter-Sessions, if it be not sooner determined, either at the Assizes or Leet.

Lowbels may be seised by any Game-keeper, if kept by a Person not qualified to kill the Game, and he (the Game-keeper) by Virtue of a Warrant from a Justice, may enter the Houses of Persons suspected to keep Lowbels; and if found upon Searching, they may be seised to the Lord of the Manor, or destroyed.

If any Person not qualified by Law shall keep or use any Lowbel, or other Instruments for destroying the Game,

L

and

Lowbels. Lurcher.

and shall not give a good Account to a Justice, &c. how he came thereby, nor produce the Party in some convenient Time of whom he bought it, or some credible Person to make Oath of the Sale thereof, he shall be convicted of the said Offence by the Justice, &c. and forfeit for every Lowbel any Sum not under 5 s. or above 20 s. one Moiety to the Informer, and the other to the Poor of the Parish where the Offence was done, to be levied by Warrant, &c. by Distress and Sale of his Goods; and for Want of Distress shall be committed to the House of Correction for any Time not exceeding one Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

Lurcher.

§ A. c. 14. A Lurcher kept or used by a Person not qualified; and being thereof convicted before one Justice where the Offence was committed, shall forfeit 5 l. to be divided between the Informer and the Poor, &c. as in Title Nets, which see.

M002.

MOOR.

M O O R found in the Possession ^{5 A. c. 14.}
of any *Alehouse-keeper*, * *Car-* * ^{Unless}
rier, *Chapman*, *Higler*, *Inn-keeper*, or ^{such Game}
Viſtualler, shall be carried before a ^{was sent}
Justice where the Offence was com- ^{to him by}
mitted; and upon View or Oath, be- ^{a Person}
ing convicted within three Months ^{qualified.}
after the Offence, shall forfeit for eve-
ry Moor 5 l. half to the Informer,
and half to the Poor where the Of-
fence was done, to be levied by †
Warrant, &c. by Distress and Sale, ^{† Of the}
&c. and for Want of Distress to be ^{Justice}
committed to the House of Correction ^{before}
for three Months without Bail for ^{whom he}
the first Offence, and four Months for ^{was con-}
every other Offence. ^{victed.}

Destroying, selling, or buying any
Moor, and within three Months ma-
king a Discovery of any *Higler*, *Chap-*
man, &c. who hath bought, sold, or
offered to Sale, or had the same in
his Possession; so as One be convicted

of the said Offence, such Discoverer shall be discharged of the Penalties, and receive the same Benefit for the Discovery, as any other Informer.

- 9 A. c. 20. Killing or Exposing a *Moor* to Sale by a Person not qualified in his own Right, forfeits 5 *l.* for every *Moor*, half to the Informer, and half to the Poor, to be levied by Distress, by Warrant of the Justice before whom the Offender was convicted; and for Want of Distress, to be committed to the House of Correction for the first Offence for three Months, without Bail, and for every other Offence four Months; the Conviction must be within three Months after the Offence done.

Nets.

Nets.

TH E first Statute made concerning Nets was *Anno 13 R. 2.* by 13 R. 2. which Laymen not having 40 s. *per c. 13.* *Annum*, nor Priests not having 10 l. *per Ann.* are prohibited to keep Nets, or other Engines to destroy Deer.

Every *Mesh* of a Net or Trammel *1 Eliz.* to catch Fish must be two Inches and *c. 17. made* an Half broad; and Nets to take *perpetual* *Smelts, Gudgeons, Eels or Loches,* *by 3 C. 1. c. 4.* must be used as heretofore; so as they do not take or destroy any other Fish.

The Forfeiture for every Offence is 20 s. and the Fish so wrongfully taken, and the Net so wrongfully used; and all Persons having Jurisdiction of Conservancy on Streams of Waters, and Lords of Leets have Power, upon the Oath of twelve Men, to hear and determine this Offence, and shall have the Forfeitures which acrew thereon; and upon Default of presenting it at the *Leet* for one Year, the Judge of Assize in the

Nets.

Circuit or the Sessions shall determine it.

And the Steward of the Leet shall give this Statute in Charge to the Jury, or forfeit 40 s. to be divided between the Crown and the Prosecutor.

This Act doth not extend to the Fishing in the Rivers *Tweed, Uske, Wye*, or to other Waters let to Farm by the Crown, so that the Spawn of Fish is not wilfully destroyed; but 'tis prohibited to take *Salmon* and *Trouts* out of Season, and the one shorter than 16 Inches, and the other shorter than 8 Inches, or *Pikes* shorter than 10 Inches, or *Barbels* shorter than 12 Inches.

x Jac. 1.
c. 27.

Every Person convicted by his own Confession, or Oath of two Witnesses before two Justices, to keep a Net to kill *Deer, Hare, Pheasant, or Partridge*, shall be committed for a Month without Bail, unless he immediately

* The Sessions or two Justices out of Sessions, may hear and determine this Offence.

pay to the Use of the Poor where the * Offence was committed, or where he was apprehended, 40 s. for every Net; but if he hath an Inheritance of 10 l. per Ann. or a Lease for Life of 30 l. per Annum or be worth 200 l. Goods, or is the Son of a Lord,

Lord, or Knight, or Heir apparent of Esquire, then he shall be excused.

Any Person suspected to have Nets to take *Partridge* or *Pheasants*, his House may be searched by the Constable, &c. by a Warrant of two Justices; and if found upon such Search, shall be cut to Pieces, as forfeited to the Officer, who shall find the Net. 7 Jac. 1. cap. 11. made perpetual by 17 Car. 1. c. 4.

None shall lay Nets in or near any Harbour in *Newfoundland*, to take the Spawn of young Fry of *poor John*, or for any other Use, except for taking Bait, on Pain to lose the Nets and Fish, or the Value to be recovered in any Court of Record in *England*. 15 Car. 2. c. 16. 22 & 23 C. 2. c. 25.

Lords of Manors, but not under the Degree of an Esquire, may appoint *Game-keepers* under their Hands and Seals, to seise Nets within their Royalties, for taking *Conies*, *Hares*, *Pheasants*, *Partridges*, or other *Game*; such Nets being kept by Persons not qualified to kill the Game.

And by the Statute 4 & 5 Will. 'tis enacted, That no Person shall keep a *Net*, *Angle*, *Leap*, *Pike*, for taking Fish, other than the Maker or Seller thereof, or Owner or Occupier of any River of Fishery; and that such Owner, &c. and such whom he 4 & 5 W. c. 23.

shall authorise, may seise and keep such Net to their own Use, which shall be used or found in the Possession of any Person whatsoever, fishing in any River or Fishery, without the Consent of the Owner or Occupier ; and any Person by a Warrant from one Justice may search the Houses and other Places of Persons prohibited, and suspected to have in their Custody any Nets, or other such Engines, and either to destroy them, or seise and keep them to his own Use.

And if any Person not qualified by Law, shall keep or use any Net for the Destruction of the Game, he shall be brought before a Justice, &c. and if he doth not give a good Account how he came thereby, or produce the Party of whom he bought them in some convenient Time, or some credible Witness to make Oath of such Sale, he shall be convicted of the said Offence by the Justice, and forfeit for every Net not under 5 s. and not exceeding 20 s. one Moiety to the Informer, and the other to the Poor, &c. where the Offence was committed, to be levied by a Warrant of one Justice, by Distress
and

and Sale, &c. and for Want of a Distress, then to be committed to the House of Correction for any Time not exceeding one Month, nor under ten Days, there to be whip'd and kept to hard Labour.

If any Person not qualified, &c. 5 A. c. 14. shall keep or use *Nets* or *Engines* to destroy the Game, and shall be thereof * convicted by a Justice, &c. * *The Con-* where the Offence was committed, *viction* he shall forfeit 5 l. one Half to the *must be* Informer, and the other to the Poor *within 3* of the Parish there, to be levied by *Months* Distress and Sale, &c. by Warrant of *after the* the Justice before whom convicted; *Offence.* and for Want of Distress to be sent to the House of Correction for three Months for the first Offence, and four Months for every other Offence.

The Justices within their respective Limits, and the Lords of Manors within their respective Royalties, may take away from Persons not qualified such Nets and Engines to their own Use.

Nets for driving and taking wild 9 A. c. 25.
Ducks, and used for that Purpose, between the 1st Day of July and the 1st of September in any Year, in any Place of Resort for wild Fowl in the

moulting Season; and the Person being * convicted thereof before one Justice where the Offence was committed by the Oath of one credible Witness, shall forfeit 5 s. for every wild Fowl, to be divided between the Informer and the Poor of the Parish where the Offence was done, to be levied by Warrant of the Justice before whom the Party was convicted, by Distress and Sale, &c. and for Want of Distress to be committed to the House of Correction not exceeding one Month, nor less than ten Days; and the Justice shall cause the Nets to be seised, and immediately to be destroyed in his Presence.

Law Cases.

Reynell v. Champernoon. Cro. Car. 165. Trespass was brought against the Defendant for cutting the Plaintiff's Nets and Oars; who pleaded, that he was seised of a *several Fishery* in, &c. and that the Plaintiff with others endeavoured to row on the Water, and to catch Fish there with their Nets; and thereupon to preserve his (the Defendants) fishing, he cut the Nets, &c. and upon a Demurrer to this Plea, the Plaintiff had

Judg-

Judgment; for the Defendant might have seised the Nets Damage-feasant, and detained them, but cannot justify the Cutting them, which he may now do by Virtute of an Act of Parliament.

The Defendant was indicted for *The King* fishing with a Net not exceeding two *v. Hawkins.* Inches and an Half in the *Mesh*; but *2 Keb.* this Indictment was quashed, because *635.* it should have been exceeding two Inches and an Half.

In *Warren's Case* it was adjudged, *Warren.* that every Subject hath a Right or *v. Matthews.* Liberty to fish with lawful Nets in *Modern* any navigable River; and the King *Cases 75.* cannot deprive him of that Liberty, for he hath only a Right to royal Fish.

Pannage.

THIS Word is variously written in antient Charters, (*viz.*)
*Pannagium, panagium, * pasnagium,*
** Quis- pathnagium, patnagium, paunagium*
que villa- nus ha- and pessona; and it signifies, that Food
bens de- which Cattle eat in the Woods, and
*cem por- which falls from the Trees, (*viz.*)*
cos dat Est pastus pecorum in nemoribus &
unum pro in silvis utpote de glandibus & aliis
pasnagio. fructibus Arborum silvestrium quarum
Domesday. fructus aliter non solent Collegi; thus
'tis defined by Linwood.

But the Chief Baron *Manwood* tells us, that 'tis most properly the *Mast of the Woods and Hedge-rows*, as the *Mast of Beech, Acorns, &c.* but that it sometimes signifies the *Money* which the *Agistors* take for the Food of Hogs with the Mast in the *King's Forest*. 'Tis mentioned in the
 † 20 C. 2. Statute † 20 Car. 2. entituled an Act
 c. 3. for the better Preservation of Timber within the Forest of *Dean*.

The

The Time for taking in *Agistments* for *Pannage*, begins about *Holyrood-day*, which is fifteen Days before *Michaelmas*, and continues fifteen Days after ; but the *Agistments* for *Herbage* are taken in before that Time ; which see in Title *Agistment*.

Park.

This Word is derived from the *French Parquer*, which signifies to enclose ; it was called a *Deerfold* in the old *Saxon Language*, and 'tis defined by *Sir Roger Manwood* to be a large Piece of Ground enclosed, and stored with wild Beasts of Chase, (*viz.*) *Buck, Doe, Fox, Hare, &c.* but in a legal Sense, 'tis a Place enclosed to keep all Beasts of Forest.

None can make a *Park* or *Chase* without the King's Licence under the great Seal, because Matters of Pleasure are not encouraged by the Common Law ; but a better Reason is, because 'tis to enclose those Creatures which are *feræ naturæ*, and by Consequence *nullius in bonis* ; and by this Means to appropriate them to themselves, by restraining them of their natural

ral Liberty, which no Man can do without Prescription, or the Grant of the King; for 'tis essential to a lawful Park, that it be enclosed by *Pales*, *Wall*, or *Hedge*; but if it lie open 'tis a good Cause of Seifure into the King's Hands, and the Owner cannot have an Action against those who hunt there; and 'tis by *Enclosure*, that it differs from a Chase or a Warren.

'Tis true, there are *Parks in Use* and *Reputation erected without Licence*; and such nominal Parks having been used as Parks for a long Time, the Law doth allow that the Owner may have an Action for killing his Deer therein; but whether these are Parks or not, *they are Grounds enclosed where Deer are usually kept*; and by the Statute 3 & 4 W. 4 *Will.* he who courses or hunts a Deer there, forfeits 20 *l.* and if he take it in Toils, kills or wounds it, he forfeits 30 *l.* for every Deer, &c.

Westm. 1. By the Statute of * *Westm.* 1. 'tis enacted; That Trespassers in Parks shall give treble Damages to the Party grieved, and suffer three Years Imprisonment, and be fined at the King's Pleasure, and give Sureties never to offend.

3 & 4 W. 4
c. 20.
Anno 3.
Ed. 1.

offend in the like Nature again ; and if they cannot find Sureties, then to abjure the Realm ; but if they fly and are outlawed, and afterwards taken upon the *Capias Utlagatum*, they were to be committed to Prison, there to remain without Bail, and never to be discharged but by a special Warrant from the King, or the Chief Justice in Eyre.

By the Statute *de malefactoribus in parcis*, 21 Ed. 1. a Keeper of a Park shall not be questioned for killing a Trespasser there, who (after the Peace cried out to him, will not yield himself) so as it be not done out of some other former Malice.

He who pulls down Park Pales 3 & 4 W. or Walls in the Night, or destroys them, or of any other Ground enclosed, where red or fallow Deer are kept ; and being convicted thereof by the Oath of one Witness before one Justice, shall by such Justice's Warrant be committed to Prison for three Months ; and by the Statute 3 Geo. he shall forfeit 30 l. as for killing a Deer.

Armed and disguised, and appearing in any Park where Deer are kept, 9 G. c. 21. this.

this is Felony without Benefit of Clergy.

Law Cases.

7Rep. 17. When the Owner of a Park dies, his Heir at Law shall have the Deer, because without them the Park which is his Inheritance, is no Park.

By the Statute *de malefactoribus in parcis* before-mentioned, a Parker is not to be questioned for killing a Trespasser there; but if such Trespasser kill the Park-Keeper, 'tis Murder; therefore *Anno 33 H. 8. Thomas Lord Dacres* of the South was executed, being found guilty by his Peers for trespassing in the Night-time, in the Park of another; the Case was thus.

Moor 86. ff. The Lord *Dacres* and another agreed to enter the Park, and hunt the Deer, and to kill those who should oppose them; and accordingly they entered the Park, and being ask'd what they had to do there, the Person who came with the Lord killed the Man who asked that Question; when the said Lord was about a Quarter of a Mile from the Place where

this

this Murder was committed, and knew nothing of it ; yet this was adjudged Murder in him.

So where one *Roger Wormale*, and *Palm. 35.*
Rowland Tristram and *Thom. Banks*, ² *Roll.*
 two of his Companions, entered *Hide-* *Rep. 120.*
park with Arms to kill and steal the *S. C.*
 Deer in the *Night-time* ; but being
 opposed by the Keeper and his Ser-
 vants they ran away ; but being pur-
 sued, one of them was wounded by
 a Shot, whereupon they all came
 back, and *Wormale* killed one of the
 Keeper's Servants ; for which they be-
 ing apprehended were all found guilty
 of Murder, because they all came
 into the Park to do a premeditated
 and an unlawful Act, and the Event
 shewed their Malice extended to kill
 any Person who should oppose them,
 they being all armed for that Pur-
 pose ; and in this Case the *Chief*
Justice Mountague said, that he had
 seen the Indictment upon which the
Lord Dacres was found guilty ; and
 it was in the same Form as this was,
 (*viz.*) for conspiring to enter the
 Park, &c. being enclosed with Pales,
 and used for keeping Deer, and that
 they did there hunt, kill, and carry
 away the Deer ; and that they far-
 ther

ther conspired, that if any of the King's Subjects should oppose them in accomplishing their evil Purposes as aforesaid, that they would kill them; and that on such a Day they entered the Park, and of their Malice forethought, assaulted *H.* and *B.* the Servants of the Keeper of the Park, and kill the said *H.* &c.

Bishop of
London
v. Heron.
4 Leon.
120.
1 And. 29.
S. C.
1 Inst.
233. S. P.
** Moor 8.*

Where the Keeper of a Park, or any of his Servants of their own Head, and without his Consent, or Command, or Agreement, killeth a wild Beast in the Park which was under his Care; or if he or they abate any House or Building in the Park, as a Barn to lay Hay in for the Deer, or * cut down any Trees or Underwood growing in the Park, and sell them, either of these Things is a Forfeiture of his Office, but not if 'tis an *Office of Inheritance*.

See Dyer
71.
Plow.
Com. 399.

Where a Parkership is granted to another, the Grantee may dispose of it to whom he will; but if a Lease for Years is made of a Park, the Lessor cannot dispark it; but if such Lessee commits Waste, he shall be punishable by an Action of Waste, which a

Lord
Zouch v.

Sir Edw. Moor, 2 Roll. Rep. 357. Godb. 419. S. P.

Keeper

Keeper of a Park shall not, because if he commits Waste, 'tis a Forfeiture of his Office.

A Park consists of *Verr*, *Venison*, *Cro. Car.* and *Enclosure*; and if either of those 59, 60.

Things is wanting, 'tis no longer a Park, but a total Disparking; therefore where all the Deer are destroyed, the Park is gone, and the King by his Letters Patents may dispark his own Park; and though the Office of Park-Keeper is granted to T. S. for Life, with a Salary for exercising such Office; yet the Owner of the Park may dispark it when he will, and in such Case the Office depending upon it is determined, and the Keeper hath no Remedy for his * Salary or Perquisites; but so long as it continues a Park, the Owner thereof cannot discharge him who hath the Grant of the Office for Life, and put in another.

* See the next Case contra.

The King granted a Parkership to T. S. with an annual Fee of 3 l. &c. and afterwards he sold the Park to one, and the Deer to another; adjudged that the Park was disparked, and that the Office of Keeper was gone; but that the yearly Fee of 3 l.

Sir Charl. Howard's Case. Hutt. 86. Cro. Car. 59. S. C.

Still

still continued, and was payable to the Grantee

Cooper v. Andrews. Libel for Tithes in Kind; the Defendant suggested for a Prohibition that T. S. was seised in Fee of, and in Godb. 237. 140 Acres of Land, Parcel of a Park; Hob. 40. and prescribed, that the Tenants of S. C. by the Name those Lands paid 20 s. and the of Hooper Shoulder of every Deer killed in the v. Andrews. Park yearly, in full Satisfaction of all 1 Roll. Tithes of the Park, and so derived a Rep: 120. Title under the said T. S. the Plaintiff replied, that the Park was dis- Moor 836. parked, and the Lands converted into S. C. Tillage and Pasture, &c. and upon a See Demurrer to this Replication it was Winch 1 adjudged, that by the Disparking the & 44. Prescription was not destroyed, be- Reynolds cause it was laid in 140 Acres of v. Pool. Land, and not in the Park; and tho' and Hutt. the Shoulders of the Deer were lost 57. S. C. by the Disparking, yet that was but casual, and the Disparking is the Act of the Party, which shall not prejudice the Prescription; and though 'tis not now a Park in Form, yet it shall be so reputed in Law.

Carey's Case. At a Justice-Seat held in the Forest of Windsor, the Owner of Sunninghill-Park claimed it to be extra
W. Jones 296. forestam

forestam, and to have free Warren there, though it should be within the Boundaries of the Forest, and this Claim was by Virtue of a Grant from King Charles; thereupon Mr. Attorney General desired that the Officers of the Forest might * enquire whether this Park was enclosed all round with Pales, and whether there were any † *Saltaries* there, so that the King's Deer might get in, and whether there are *Conies* there; and if there are, then, whether the Park was so enclosed that they could not get out; for if they can, then they may eat the Grass so close, that they will leave none for the Deer in the Forest; all or any of these Things are Causes of Seifure.

* This is to be upon their general Oath as Officers, and not by any particular Oath.
† Deer-Leaps.

A Man may have a Park within a Forest, either by Prescription or Grant; but such Park must be so enclosed, that the Beasts of the Forest cannot enter into it; which if not done, 'tis a Forfeiture of the Liberties of the Park; and so it is if he hath a *Saltary*, for the Nature of a Park is to be enclosed.

And therefore where *Anno 15 Ed. The King*
3. the Earl of *Lancaster*, who was *v. Sir John*
Lord of a Forest, granted to *John Byron*
Har- *Bridgm.*
26.

Partridge.

Harrington that he might make a Park there; it was adjudged, that if the Grantee enclose it so slightly that the Beasts of the Forest might get in, this was a Forfeiture, and the Lord might enter such Park, and take the Deer.

Partridge.

This being a Bird of *Pleasure and Sport*, several Statutes have been made to preserve them from Destruction by any Person, but those who are qualified by Law to kill the Game.

11 H. 7. cap. 17. The Preamble of this Statute takes Notice that several Persons having lit-
 The first Statute of this Nature was made *Anno 11 H. 7.* by which 'tis enacted, That Partridges shall not be taken in another Man's Ground, without his Consent or Licence, under the Penalty of 10 l. to be divided between the Owner of the Ground, and the Prosecutor.

the Sub-
 stance to live on, do by Engines, &c. take Pheasants and Partridges in the Grounds of other Men without Leave, whereby they lose the Pleasure of hawking and taking the same, and the Profit which would be to their Household, to the great Hurt of Lords and Gentlemen, and others having great Livelihood.

About

Partridge.

239

About 90 Years afterwards another 23 Eliz. Statute was made, by which all Persons were prohibited to kill or take any Partridges *in the Night-time*, on Pain to forfeit for every Partridge 10 s. to be recovered in any Court of Record, and divided between the

* Lord of the Liberty where the Offence was committed, and the Prosecutor; and if not paid in ten Days, the Offender shall be imprisoned one Month without Bail, and enter into a Bond for two Years only, with good Sureties before some Justice not to offend in the like Kind.

* But if the Lord will dis-
pence with
his Part,
the Poor
shall have
it, to be re-
covered by
the Church-

wardens, notwithstanding the Statute 11 Hen. 7. before-mentioned; this Statute 23 Eliz. takes Notice, that Pheasants and Partridges were within a few Years almost destroyed, &c.

Justices of Assize and Sessions, and Stewards of Leets have Power to hear and determine this Offence; and one Justice may examine the Offender, and bind him over with good Sureties, to answer it at the next Quarter-Sessions, if the Offence is not sooner determined, either at the Assizes or Leet.

This

This Act doth not restrain *Fowlers*, who unwillingly take Partridges, and let them go again.

1 Jac. 1. By the Statute 1 Jac. every Person
cap. 27. convicted by his own Confession, or
This Sta- by two Witnesses upon Oath before
tute was two Justices, to have killed or taken
temporary, any Partridge, shall by the said Ju-
(viz.) to stices be committed to Prison without
continue to Bail, unless he immediately pay to the
the End of Use of the Poor where the Offence
the first was done, or where he was appre-
Session of hended, 20 s. for every Partridge killed
the next or destroyed; and after one Month's
Parlia- Commitment, he shall be bound with
ment; and two Sureties before two Justices in
by the Sta- cap. 4. it 20 l. a-piece, with Condition never
tute 3 Car. to offend in the like Kind again.
cap. 4. it
was conti-
tinued to
the End
of the first Session of the next Parliament, and from
thence till some other Statute should be made to continue
or discontinue the same, which hath not yet been done.

Every Person convicted as aforesaid,
for killing or taking any Partridge,
unless he have 10 l. per Annum In-
heritance, or † Lease for Life of 30 l.
per Ann. or worth 200 l. in Goods,
or otherwise the Son of a Baron or
Statute
22 & 23 Car. 2. which see in Title Qualification.

Knight, or Heir apparent to an Esquire, shall suffer Imprisonment as aforesaid, unless he pay 40 s. to the said Use.

A *Partridge* shall not be bought to sell, or be sold, unless reared up, and brought from beyond Sea, on Pain to forfeit for every * *Partridge* 10 s. * *And for* to be divided between the Prosecu- *every Phea-* tor and the Poor of the Parish where *sant* 20 s. the Offence was committed.

Justices of Assize and Sessions, and two or more Justices out of Sessions have Power to hear and determine this Offence.

He who shall be convicted by his 7 Jac. own Confession, or by the Oath of ^{c. 11.} two Witnesses before two Justices, to have destroyed any *Partridge* between the 1st Day of *July* and the last Day of *August*, shall suffer a Month's Imprisonment without Bail, unless he forthwith pay to the Use of the Poor where he committed the Offence, or where he was apprehended, 20 s. for every *Partridge* so destroyed or taken.

A Lord of a Manor, or he who hath free Warren, or Inheritance of 40 l. *per Annum*, or Freehold of 80 l. *per Annum*, or Goods worth 400 l.

M

or

Partridge.

or their Servants licensed by them, may take Partridges within their own Grounds and Precincts in the Day-time, and between *Michaelmas* and *Christmas* only.

Any Person of *mean Condition* being convicted by his own Confession, or by the Oath of one Witness before two Justices, to have killed or taken a Partridge, shall by the said Justices be committed to Prison without Bail, unless he forthwith pay to the Use of the Poor where the Offence was done, 20 s. for every Partridge so killed or taken, and also become bound before one Justice, in a Recognizance of 20 l. never to offend in the like Nature again.

The Offender must be prosecuted within six Months after the Offence done; and if punished by this Law, shall not be punished by any other Law for the same Offence.

4 & 5 W.
c. 23.

All Laws and Statutes in Force for the better Preservation of the Game; and every Clause and Thing therein not altered or repealed by this Statute, shall be put in Execution.

Constables, &c. by a Justice's Warrant may enter and search the Houses of Persons not qualified to kill the Game;

Game; and in Case any Game shall be found by *such Search*, the Offender shall be brought before a Justice; and if he doth not give a good Account how he came thereby, or produce the Party of whom he bought it in some convenient Time, or some credible Witness to make Oath of the Sale, he shall be convicted by the Justice, and shall forfeit for every Partridge so found not under 5 s. nor more than 20 s. to be divided between the Informer and the Poor of the Parish where the Offence was done, to be levied by Warrant, &c. by Distress and Sale; and for Want of Distress, shall be committed to the House of Correction not exceeding one Month, nor less than ten Days.

Partridge found upon any Person, either in his House or Out-house, by a Constable, &c. searching for the same, and not qualified to kill the Game; if such Partridge is in the Custody of any Higler, Chapman, * Carrier, Inn-keeper, Alehouse-keeper or Victualler, he shall be brought before one Justice where the Offence was committed; and being † con-
5 A. c. 14. made perpetual by 9 A. c. 25.
* Unless sent to him by a Person qualified.
† The Conviction
must be within three Months after the Offence.

Partridge.

viſted upon View, or the Oath of one Witneſs, he ſhall forfeit for every Partridge 5 *l.* to be divided between the Poor of the Pariſh where the Offence was done, and the Proſecutor; to be levied by Warrant of that Juſtice before whom convicted by Diſtreſs and Sale, &c. and for Want of Diſtreſs to be committed to the Houſe of Correction three Months for the firſt Offence without Bail; and for every other Offence four Months.

He who deſtroys, ſells, or buys a Partridge, and ſhall within three Months diſcover any *Higler, Chapman, &c.* who hath bought, fold, or offered, or had the ſame in his Poſſeſſion, ſo as one be convicted of the ſaid Offence; ſuch Diſcoverer ſhall be diſcharged of the Penalties, and receive the ſame Benefit for the Diſcovery, as other Informer.

Juſtices and Lords of Manors within their reſpective Limits, may take away any Partridge from a *Higler, Chapman, &c.* and from any Perſon not qualified to kill the Game.

9 A. c. 25. If any Perſon not being qualified in his own Right, ſhall *ſell or expoſe to Sale any Partridge*, he ſhall be brought before a Juſtice, &c. where
the

the Offence was done ; and being convicted (as by the Statute 5 *Annæ* cap. 14. he shall forfeit for every Partridge 5 *l.* to be recovered in such Manner, as by the said Act 5 *Annæ* is prescribed.

If any Partridge shall be found in the Shop, House, or Possession of a Person not qualified in his own Right, or entitled thereunto by some Person qualified, the same shall be adjudged *an Exposing to Sale*.

If any Person shall take, kill, or destroy any Partridge *in the Night-time*, he shall incur the like Forfeiture for every Offence, to be recovered by the same Means.

A Recapitulation of all the Statutes before-mentioned, relating to Partridges.

The first inflicts the greatest Punishment ; for by that Statute a Partridge must not be taken in another Man's Ground, without his Consent or Licence, under the Penalty of 10 *l.*

By the next Statute 'tis prohibited to kill, or take a Partridge *in the Night-time* ; and by this Statute the Penalty is 10 *s.* but by the Statute

M 3

9 *Annæ*,

Partridge.

9 *Annæ*, c. 14. 'tis 5 *l.* for every Partridge so taken or killed.

1 Jac. 1. cap. 27. A Person convicted to have taken or killed a Partridge, shall be committed without Bail, unless he immediately pay 20 *s.* for every Partridge; the like Punishment and Forfeiture for killing or taking any Partridge between the 1st of *July* and the last Day of *August*, * he

7 Jac. 1. c. 11. who sells a Partridge, or buys one to sell again, except brought up in his House, or from beyond Sea, forfeits 10 *s.* for every Partridge.

** Jac. 1. c. 27.

4 & 5 W. c. 23. A Partridge being found upon a Warrant to search, the Forfeiture is not under 5 *s.* nor above 20 *s.* but being found in the Custody of an Higler, Chapman, Inn-keeper, Alehouse-keeper, or Victualler, he forfeits 5 *l.* for every Partridge.

5 A. c. 14.

9 A. c. 25. Any Person selling a Partridge, or exposing it to Sale, forfeits 5 *l.* for every Partridge; and if 'tis found in the Possession of any one not qualified in his Right, that shall be an Exposing it to Sale.

Law Case.

The Defendant was indicted upon 23 Eliz. the Statute 23 *Eliz.* for that he in such a Place did take and kill Partridges in the Night-time *cum Retiis & aliis Enginis*; but the Indictment was quashed, because there is no such Word as *Retiis*; and it being a Question whether such an Indictment might be taken at the Sessions; it was ruled that it might, for the Justices out of Sessions have only Power to examine the Witnesses, and bind them over to the next Sessions, but not to convict.

Pheasant.

All the Statutes before-mentioned under the Title *Partridge*, do likewise relate to *Pheasants*; and there is the same Conviction, the same Punishment, and the same Forfeiture for killing and taking Pheasants, as for killing and taking Partridges only by the Statute 1 *Jac. 1. cap. 17.* he who sells a * Pheasant, or buys one to sell again, forfeits 20 s. to be divided 10 s.

vided between the Poor and the Prosecutor.

He who steals a tame Pheasant, knowing it to be tame, is guilty of Felony.

Law Case.

Usher v. Bushnell. In Trespass for taking *phasianos suos* in such a Place ; upon Not guilty pleaded the Plaintiff had a Verdict ; and afterwards it was moved in Arrest of Judgment, that this Declaration was ill, because the Plaintiff had declared for taking *phasianos suos*, whereas Pheasants are Birds *feræ naturæ* ; and therefore the Plaintiff cannot have such a Property in them, as to call them *suos* ; but the Judgment was affirmed, because after a Verdict it shall be intended that these *Pheasants* were dead ; and then the Plaintiff might have a Property in them.

Raym. 16.
Sid. 39.
S. C.
See Child v. Greenhill.

Pike. See Title **Leap.**
Pidgeon. See Title **Dove.**

Pond.

Pond.

Trespassers in Ponds shall give treble Damages to the Party grieved, ^{Westm. 1. c. 10.} suffer three Years Imprisonment, be ^{3 Ed. 1.} fined at the King's Pleasure, and give Surety never to offend again in the like Nature ; and if they cannot find Sureties, they shall abjure the Realm, or flying, they shall be outlawed.

Ponds unlawfully broken down, or ^{5 Eliz. c. 21.} destroying the Head of any Pond, Moat, or Dam, Stew or Pit where Fish are put, or wrongfully fishing in them, to the Intent to destroy, kill, take, or steal any Fish against the Consent of the Owner or Possessor, or not having lawful Authority so to do ; and being * convicted at the Suit of the King, or the Party grieved, * *In Sessions.* shall be imprisoned for three Months, and pay him treble Damages, and give Security for his good Behaviour for seven Years, or remain in Prison without Bail, till he do find Security.

Any Person armed and disguised, ^{9 G. c. 21.} and breaking down the Head of a Fish-pond, whereby the Fish shall be

M 5 lost,

Property.

lost, or shall rescue such Offender, or procure another to join with him in such unlawful Act, is guilty of Felony without Benefit of Clergy.

Property.

Property is either *absolute* or *qualified*, and a Man may have an absolute Property in several Things, which are not *feræ naturæ*, as in Ducks, Poultry, Geese, &c. but he cannot have such a Property in Things which are *feræ naturæ*, as wild Fowl, (*viz.*) Partridge, Pheasants, &c. and wild Beasts, such as Conies, Hares, &c. or Fish in the Sea or in Rivers; but he may have an absolute Property in other Things of a base Nature, such as Greyhounds, Hounds, Mastiffs, Spaniels, &c. and for such Things if * taken away an Indictment will lie for a Trespass, or the Party grieved may have an Action of Trespass, &c. and recover Damages.

* But 'tis
not Felony
to steal
them.

However a Man may have a qualified Property in Things which are *feræ naturæ*, which Property is possessory, and only for a certain Time, and may be obtained by Industry, (*viz.*) by taking such Creatures, and making

making them tame; and in such Case a Man may have a possessory Property in them so long as they continue tame, and do not regain their natural Liberty.

Likewise a qualified Property may be gained in Things *feræ naturæ*, by Reason of *Impotency and Place*, as of young Hawks or * young Pidgeons * 'Tis Fe- in their Nests bred in my Ground; *longy to take* for which I may have an Action of *them.* Trespass, if taken when they cannot fly.

A qualified Property may also be gained in such Things, by Reason of a Privilege in a Park or Warren, as Deer, Conies, &c. Fish in a Trunk, or Pidgeons in a Dove-house; but none of these Things can be properly called *suos*, because no Man hath an *absolute Property* in them, and therefore Felony cannot be committed by taking them away, unless reduced to be tame, though whilst they are wild, they do really belong to the Owner of the Park or Warren; all which was resolved in *Child and Greenhill's Case*, which is as followeth.

In an Action of Trespass for fish- Child v. Greenhill.
ing in *separali piscaria* of the Plain- Cro. Car.
tiff, and for taking *Pisces suos*; upon 553.
Not March
48. S. C.

Property.

Not guilty pleaded the Plaintiff had a Verdict ; but it was moved in Arrest of Judgment, that this Declaration was ill, because the Plaintiff could have no Property in the Fish, so as to call them *suos*, for they are *feræ naturæ* ; but adjudged, that a Man may have a special or qualified Property in many Things which are *feræ naturæ* ; and this he may have *ratione infirmitatis*, as of young Pidgeons bred in Nests in his Grounds ; or *ratione loci*, as of a *Hare* whilst it sits on his Land ; and *ratione privilegii*, as of *Conies* in a Warren ; but that in the principal Case the Plaintiff had a Property in these Fish *ratione privilegii*, because they were in *separali piscaria sua* ; 'tis true, if he had declared generally for taking *pisces suos* it had been ill, though a Declaration *quare clausum fregit & lepores suos cepit* is good, because a Man may have a Property in a *Hare* *ratione loci*, so long as it sits on his Ground ; for no Man can enter to disturb or take it, without being a Trespasser.

Purlieu.

Purlieu.

Purlieu is derived from the *French Pur*, or rather from the *Latin Purus*, which signifies *free* and *lieu*, which signifies *a Place*; the Meaning is as followeth, (*viz.*) The first *Norman Kings* made several *Forests* in *England*, and took the *Grounds* of several *People* lying *near those Forests* to enlarge the same; afterwards in the *Reign of Hen. 3.* those *Forests* were surveyed by certain *Officers* appointed for that *Purpose* by the *King*, that the *antient Boundaries* thereof might be ascertained; and upon this *Survey*, (which was called the *Perambulation of the Forest*) those *Grounds* which had been taken in and added to *Forests*, were severed from them, and restord to the right *Owners*, or their *Heirs*; and from that *Time* they were called the *Purlieus*, (*i. e.*) *Places* free from the *Laws* and *Ordinances* of the *Forest*, and so continue to this *Day*.

After this *Disafforestation* of the *Lands*, which were once *Part* of the *Forests*, the *Purlieu Men* might grub

or

or cut down all Underwoods and Timber-Trees, and convert their Pasture and arable Lands into Meadows, and enclose them with any Sort of Enclosures, and dispose and use them, as if they had never been Part of the Forest; and they might lawfully hunt within their Purlieus, as any other Man might do on his own Lands; and if they hunt any Deer in the Purlieu, and they should run towards the Forest for Safety, they may pursue them to the Boundaries thereof, and then call off their Dogs; but if afterwards they follow the Deer into the Forest, and kill it there, 'tis no Offence, so as the Owner of the Dogs doth not enter the Forest, nor meddle with the Deer after 'tis killed; but if the Dogs fasten on the Deer in the Purlieu, and before it gets into the Forest, and by the Strength thereof they are drawn into the Forest, then the Purlieu Man may follow his Dogs, and take the Deer.

Law Cases.

At the Court of the Chief Justice in Eyre held in the Forest of Windsor, the Attorney general Noy *Sir Rich.* held, that a Purlieu Man could not *Weston's* lawfully kill a Deer within the Purlieu, though on his own Ground; *Case.* *W. Jones* for he hath only an Authority to keep *278.* them out, but not to kill them.

The Purlieus being thus restored to the right Owners of the Grounds as aforesaid, by a *Perambulation* made in the Reign of H. 3. a * Statute was made in the Reign of his Son and immediate Successor, that those to whom his Father had granted the Purlieus, whereby their Woods were disafforested, should be quit of the Laws of the Forest; but then they shall have no Common therein.

* 33 E. 1.
Stat. 5.

Qua:

Qualification.

There are several Statutes made to restrain People from killing the Game, unless they are qualified so to do by having such Estates, as in the respective Statutes are mentioned.

The first of which Laws was made
 13 R. 2.
 c. 13. Anno 13 R. 2. by which a Layman must have 40 s. *per Annum*; and a Priest 10 l. *per Annum*, otherwise he shall not keep or have any Greyhound, Hound, Dog, Ferret, Net or Engine to destroy Deer, Hares, Conies, or any other Gentleman's Game.

The next was Anno 1 Jac. 1. by
 1 Jac. 1.
 c. 27. which a Man must have 10 l. *per Ann. Inheritance*, or a Lease for Life of 30 l. *per Ann. or be worth 200 l. in Goods*, or be the Son of a Baron, or Knight, or Heir apparent of an Esquire, otherwise he shall not keep a Greyhound, Dog or Net, to kill Deer, Hare, Pheasant, or Partridge.

About seven Years afterwards, and
 1 Jac. 1.
 c. 11. in the same King's Reign, it was made lawful for any Man who is Lord of a Manor,

Qualification.

257

Manor, or who hath a free Warren, or an Inheritance of 40 *l. per Ann.* or Freehold of 80 *l. per Annum*, or Goods worth 400 *l.* either by himself or his Servants by his Licence, to take *Pheasants* or *Partridges* in the Day-time, within their own Grounds or *Precincts*, betwixt *Michaelmas* and *Christmas*, and at no other Time.

The last Statute of this Nature ^{22 & 23} was made *Anno 22 Car. 2.* by which ^{C. 2. c. 25.} 'tis declared, that Persons not having Lands, or some other Estate of *Inheritance* of 100 *l. per Ann.* in their own or their *Wife's* Right, or for *Life*, or a *Lease* for 99 Years of 150 *l. per Ann.* other than the Son and Heir of an *Esquire*, or other Person of some higher Degree, or Lord of a Manor, or Owners and Keepers of Parks, Chases, or free Warrens stock'd with Deer or Conies, shall not keep *Bows*, *Engines*, *Ferrets*, *Greyhounds*, *Guns*, *Hare-pipes*, *Lowbels*, *Lurchers*, *Nets*, *Setting-Dogs*, *Snares* or *Trammels*, for taking *Conies*, *Hares*, *Pheasants*, *Partridges*, or other Game.

Ranger.

Ranger.

A Ranger is a sworn Officer *not in, but of the Forest*, in which there are usually twelve Rangers; they are made by Letters Patent of the King, and have a Fee paid every Year out of the Exchequer, and certain Fee Deer; their Business is to walk every Day in the Forest near the Purlieus, and to see, hear, and inquire of Offenders, and their Crimes done within their Bailiwicks, and to present the same, and to rechase the Deer out of the *Purlieus* into the Forest; therefore where there are no *Purlieus*, there are no *Rangers*.

Regar-

Regarder.

Regarder, in *Latin Spectator*, is a ministerial Officer of the King's Forest; his Business is to view and inquire into all Offences done within the Forest, and within every Bailiwick thereof; for which Purpose they are usually twelve in Number, constituted by the King, or by the *Chief Justice in Eyre*; they are to view what Offences have been done either in the *Vert* or *Venison*; the one is every Thing which grows in the Forest and bears *green Leaves*, which may cover the Deer, and the other is any Beast of the Forest fit for Men to eat; they are also to certify all Defaults of the Officers of the Forest, either of concealing Offences by the Foresters, or of any other Misdemeanour, in the Execution of their respective Offices.

But a *Regarder* cannot present any Thing, unless 'tis upon his own View; which Presentment he must write fairly on a Roll, and certify it under his Hand and Seal at the next *Swainmote*.

And

Chap. 5.

And by the Charter of the Forest they are obliged to go through it, as it was accustomed at the Time of the Coronation of H. 2. and no other-

* *There is likewise a Court of Regard or Survey of Dogs, which is held every third Year.*

4 Inst.

289, 298, the Sheriff.

308.

† *See the Form of the Oath in Manwood* 188, 195, 207.

Law Case.

The Attorney General Noy moved the Court of Justice-Seat held for the Forest of *Windsor*, that several Regarders of the Forest might be fined, because *minus plene presentaverunt & imperfecte*, and they were fined accordingly, (*viz.*) the Regarder of *Finchamsted Bailiwick* 5 l. & c.

Rooks. See **Crows.**

Set.

Setting-Dog. See **Dogs.**

Skin of a Deer. See **Deer.**

Soldier.

IF any *Officer or Soldier* shall, with- 9 G. c. 4.
out Leave of the Lord of the Ma-
nor, under his Hand and Seal, kill or
destroy any *Coney, Fish, Fowl of any*
Sort, Hare, Partridge, Pheasant, Pid-
geon, Poultry, or other Game, and shall
be convicted thereof by one Witness
before one Justice; every Officer so
offending shall forfeit 5 *l.* and every
Soldier 20 *s.* to the Use of the Poor
where the Offence was committed.

Which 20 *s.* forfeited by a Soldier
shall be paid by the Officer in Chief,
under whose Command he is; and if
such Officer shall not pay the said Pe-
nalties within two Days after Demand
thereof by the Constable or the Over-
seers of the Poor, he is by the said
Act declared to have forfeited his
Commission.

Swain.

Swainmote.

The Word *Swainmote* is a Compound of two *Saxon* Words, (*viz.*) *Swein* which signifies a *Country Swain*, and sometimes a *Freeholder*, and *Mote* or *Gemote*, which signifies a *Court*, and 'tis a *Court of Record* incident to a *Forest*, as a *Court of Piepowders* is to a *Fair*; the *Swains*, (*i. e.*) the *Freeholders* meet at this *Court*, which is held before the *Verderors* by their * *Steward*; but formerly there being no certain *Time* limited when this *Court* was to be held, it was kept as often as the *Verderors* pleased, and the *People* who dwelt out of the *Forests* were compelled to attend; and those who did not, were punished by exacting *Fines* from them, to excuse their *Non-appearance*.

* *Who*
ought to
be a *Man*
of *Learn-*
ing and
Law.

To remedy which *Oppression*, it was provided by the *Charter* of the *Forest*, that this *Court* should be held three *Times* in a *Year*, and not oftner, (*viz.*) once in the *Beginning* of fifteen *Days* before the *Feast* of *St. John the Baptist*; and because from that *Day* to fifteen *Days* after was the

And upon that Day the next Court of *Swainmote* was to be held, at which Court the *Agiftors* were to receive the Money due for the *Herbage* eaten by commonable Cattle; and this they were to do in the Presence of the Verderors and Foresters, that it might be enrolled amongst their Records.

The Third and last Court of *Swainmote* in the Year, is to be held on † *St. Martin's Day*; at which Court † 11 Nov. the *Agistors* were to receive the Money for the *Agistment* of Cattle not commonable, such as *Hogs, &c.* which were taken into the Forest on *Holyrood-day*.

Though this is a Court of Record, ² Bulst.
yet 'tis properly a Court of Enquest; ²⁹⁸.
for they may enquire of Offences, ⁴ Inst.
and convict the Offenders, but can- ^{289, 290}.
not give Judgment, for that is to be
² done

Swainmote.

done at the *Justice-Seat* ; therefore, as it hath been observed, a *Swainmote* without a *Justice-Seat* is of little or no Effect.

To these three *Courts of Swainmote*, 'tis declared by the said Charter of the Forest, that none shall be compelled to come but the *Foresters*, who are to present their Attachments, and the *Verderors* who are Judges of the Court ; but notwithstanding these negative Words, 'tis usual for the Freeholders and other lawful Men to attend there to be impanelled on Juries ; and also the *Woodwards*, and all other inferior Officers of the Forest must be there, or be amerced ; which Amerciaments must be estreated to the Court held by the Chief Warden of the Forest, that they may be levied by Distress.

The Things and Offences which are properly inquirable at this Court, are first of all, those who own Suit or Service there ; they are likewise to enquire of all *Affarts*, (*i. e.*) Woods grubbed up, and the Land converted into Tillage, of all *Enclosures*, *Encroachments*, and *Purprestures* with the Forest, of taking away or removing any Bounds, of making
Clay-

Clay-pits, digging Mines or Turfs to the Prejudice of the Commoners ; of destroying Mills, Houses, or other Buildings without the King's Licence.

They may likewise enquire if there are more Foresters, or other Officers than usual, of *all Oppressions* of what Nature soever, of *Extortions* by any Officers of the Forest, of *surcharging Commons*, of *burning Heath or Fern* within the Forest, of *mowing the Grass* there, of *cutting Vert or felling Wood*, of all *Abuses* about or concerning *Pannage*, of *Hunting* or *destroying the Deer, Fox, Hare, Conies*, or any other Beast, or the Fowl of Warren, and of *hunting in the Purlieus* without Authority, and of all *Agistments, Rents, &c.*

And if at this Court the Presentments of any of the Foresters are found true by a Jury, concerning either the *Vert* or *Venison*, in such Case the Offender cannot traverse them as he may at a Justice-Seat ; but he stands convicted by Verdict, though the Judgment must be given by the *Chief Justice in Eyre* at the Court of Justice-Seat, who may proceed upon Verdicts given at the *Swainmote*.

Swans.

At a Justice-Seat held for the Forest of *Windsor*, Noy the Attorney General held, that by the Laws of the Forest it was sufficient, if the Swainmote Roll, delivered at the Justice-Seat, was signed and sealed by one Officer and no more, if it was done by the Assent of all the *Verderors*, *Regards*, and other Chief Officers of the Forest, though they did not put their Seals to it.

Swans.

The first Statute made concerning
22 Ed. 4. *Swans*, was *Anno 22 Ed. 4.* by which
c. 6. 'tis enacted, That none but the King's

* *These*
are Duties
or De-
ductions,
which are
yearly paid

besides * *Reprises*, on Pain to have
them seised by any one having Lands
of that yearly Value, to be divided
between the King and the Seisor.
out of *Lands, as Rent-Charges, Pensions, Fees of Stew-*
ards or Bailiffs, &c.

The next Statute was made *Anno* 11 H. 7. 11 H. 7. but this relates to *Swans* c. 17. Eggs, which must not be taken out of their Nests, on Pain of Imprisonment for a Year and a Day, and to be fined at the King's Pleasure, to be divided between the King and the Owner of the Ground where the Eggs were taken.

And by another Statute made *Anno* 1 Jac. 1. 1 Jac. 1. he who shall be convicted by c. 27. his Confession, or Oath of two Witnesses before two Justices, to have taken or destroyed a *Swan's Egg*, shall by the said Justices be committed to Prison without Bail, unless he immediately pay to the Use of the Poor where the Offence was done, or he apprehended, 20 s. for every Egg so taken or destroyed; and after Commitment for one Month, shall before two Justices be bound with two sufficient Sureties in 20 L. a-piece, with Condition never to offend in the like Nature.

Though a Swan is a *royal Bird*, yet a Subject may have a Property in such Birds, if not marked; and if they are swimming in his private Waters, and if they escape out of such Waters into any open and common
N 2 River,

Swans.

River, he may retake them upon *fresh Pursuit*, as an Estray, (for no other Bird can be an Estray) but if without such Pursuit they swim in Common Rivers, and have by that Means regained their natural Liberty, they belong to the King.

Law Case.

The only Case in Law which I can find relating to this Title, is the *Case of Swans* reported by my Lord 7 Rep. 15. Coke in his 7th Report as followeth.

ff. Swans in a Common River were upon an Inquisition found, &c. seised for the Use of the King; and, thereupon T. S. who claimed them pleaded, that the Abbot and Convent of, &c. had enjoyed the Profit of all Swans *in astuaria prædict' nidificantium*, and so made a Title to them under the Abbot, and proved an *Amoveas manum*; and in this Case it was adjudged,

That *all Swans* swimming in a Common River, which have gained their natural Liberty, may be seised for the King's Use, because they are *Volatilia regalia*, but yet a Subject may have a Property in them, if swim-

swimming in his own River, and that if they get into a Common River, he may retake them upon a fresh Pursuit.

That *Cygnets* shall be equally divided between the Owners of the Swans ; but that upon the River *Thames*, the Owner of the Lands next the River where the Swans have their Nests, shall have the third Part of the *Cygnets* by Custom.

That a Man may prescribe to have *wild Swans*, but not as it was done in this Case ; for the Defendant ought to have set forth, that the *Abbot and Convent, &c. and all those whose Estate they had, &c.* used to enjoy, all the Profits of Swans, &c.

He who steals a Swan marked and pinioned ; or if not marked, but kept in a Mote or private River, is guilty of Felony.

Teal.

9 A. c. 25. **H**E who between the 1st of *July* and 1st of *September* in any Year, shall by *Hays*, *Tunnels*, and other Nets, drive and take any *Teal* or Water-fowl, in any Place of Resort for wild Fowl in the moulting Season; and being thereof convicted before one Justice where the Offence was committed, and by the Oath of one credible Witness, shall forfeit 5 s. for every *Teal* or Water-fowl, to be divided between the Poor where the Offence was done, and the Informer, to be levied by a Warrant of that Justice before whom the Offender was convicted, by Distress and Sale, &c. and for Want of Distress, to be committed to the House of Correction not exceeding a Month, or less than fourteen Days, there to be whip'd and kept to hard Labour.

Coils. See *Deer*.

Tram:

Trammels.

Trammels to take *Conies*, *Hares*, 22 & 23
Pheasants or *Partridge*, may be seized Car. 2.
 by a Game-keeper, if kept by one c. 25.
 not qualified to kill the Game, who
 by Virtue of a Warrant of one Ju-
 stice, &c. may enter the Houses,
 Out-houses, &c. of suspected Per-
 sons, &c. to search for the same; and
 if found upon such Search, then to
 seize them for the Use of the Lord
 of the Manor, or destroy them.

Tumbler. See Tit. **Dogs.**

Tunnels.

By the Statute 4 & 5 *Will.* 'tis en- 4 & 5 W.
 acted, That if any Person not quali- c. 23.
 fied, &c. shall keep or use any *Tun-*
nels, or other Instrument for destroy-
 ing the Game, and cannot give a
 good Account to a Justice before whom
 he is brought, how he came by such
Tunnels, or produce the Party of
 whom he bought them, in some con-
 venient Time, or some credible Wit-

ness to make Oath of the Sale thereof, he shall be convicted by the said Justice, and forfeit not under 5 s. nor above 20 s. to be divided between the Informer, and the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale, &c. and for Want of Distress to be committed to the House of Correction not exceeding one Month, nor less than ten Days, there to be whip'd and kept to hard Labour.

And if any Person shall not before the same Justice give such Evidence of his Innocency as aforesaid, he shall be convicted thereof in like Manner, as the Person first charged therewith is hereby directed to be convicted; and so from Person to Person, till the first Offender shall be discovered.

Uenison. See Uert.

Uerde-

Verderor.

Verderor, in *Latin Viridarius*, a 4 Inst. *Viridi, Vert*, is a judicial Officer ^{291, 292,} of and in the King's Forest, and they ^{316, 317.} are usually four in Number in every Forest; he is chosen by Virtue of the King's Writ directed to the Sheriff, and by the Freeholders of the County where the Forest lies, in such County-Court; and after he is thus chosen, he must be sworn by the Sheriff to maintain the Orders usually observed in the Forest, and the Laws thereof; he is to *view, receive*, and enrol the Attachments, and the Presentments of all Manner of Trespasses concerning the *Vert* and *Venison*; and his Office is properly to see that the *Vert* is well maintained, and generally to do Right and Justice, according to the Laws of the Forest, ^{4Inst.314.} which are established by Act of Parliament, and for the most Part are contained in the Charter of the Forest, and *Ordinatio forestæ*. 24 Ed. 1.

Law Cases.

Sir Rich. It was held at a Justice-Seat in
Harri- the Forest of *Windsor*, that a *Verde-*
son's Case, ror ought to engross on Parchment-
and Sir ror ought to engross on Parchment-
Charles Rolls all Offences, which are present-
Howard's ed to him by the *Foresters*, and from
Case, the Court of Attachments, and to
W. Jones present the said Rolls at the next
 167. *Swainmote*; and that *Sir Richard*
Harrison, and *Sir Charles Howard*
 being two *Verderors* of that Forest,
 had neglected so to do; and were
 each of them fined 20 *l.* a-piece for
 not delivering up the Rolls in Parch-
 ment at the *Swainmote*.

W. Jones At the same Justice-Seat a *Verde-*
 295. ror claimed two Trees, and two Deer
 for his Fees; but the Claim was dis-
 allowed, and an Order was then made,
 that he should have a *Buck* every
 Summer, and a *Doe* in Winter.

Verderors.

Vert and Venison.

Vert is derived from the *French Verd*, in *Latin Viridis*, and in *English Green Hue*; it signifies in the Forest Law every Thing which grows and bears green Leaves, which may cover the Deer; and 'tis divided into *Over-vert*, which is High Wood, and *Manw.*
nether Vert which is Underwood. *2. P. S.*
c. 6.

My Lord Coke in his 4 *Inst.* tells *4Inst. 327.* us, that some *high Woods* are for the Defence of the Deer, such as *Oaks* and *Beeches*; and some are for Shelter and Defence, as *Ashes*, *Poplars*, &c. that some *Underwoods* likewise are for Shelter and Defence, such as *Maples*, *Alder*, *Elder*, &c. some are for Food, Browse, and Defence, as *Sallow*, *Willows*, *Hawthorn*, *Blackthorn*, &c. of Bushes and other Vegetables, some are for Hiding and Shelter only, as *Brakes*, *Gors*, *Heath*, &c. and then he sums up all, and tells us, that there are three Sorts of Plants, which he calls *Arbores*, as *Highwood* and *Underwoods*, *Arborescentes*, which he calls *Bushes* and *Brakes*; and *Herbæ*, which are *Herbs* and *Weeds*; and those tho' *Green*,

Green, are not called *Vert*, according to the Forest Law, because they cannot cover the Deer.

Now by that Law every Trespasser in *Vert* or *Venison*, is to be imprisoned, * ransomed, and bound to the good Behaviour in the Forest, which must be executed by a judicial Sentence of the *Chief Justice in Eyre*.

* This is the Payment of a great Sum for his Pardon.

But if such Trespass fly, and cannot be taken, then *Hue and Cry* may be made after him; but it cannot be pursued out of the Boundaries of the Forest.

4Inst.316. As for *Venison*, the Word is not derived a *Venere*, but from the *French Venaison*, so called from the Means of taking it, *quia capitur ex venatione*.

Warden

Warden of the Forest.

THE *Chief Warden of a Forest* is an Officer of great Authority, and next to the Chief Justice in Eyre, in order to bail and discharge Offenders out of Custody, who are imprisoned or indicted for Offences in the Forest; but he is not a judicial Officer, because he may make a Deputy by the Forest Law, and wherever there is a *Castle* in a Forest, the *Constable of that Castle* is always *Chief Warden*, as the *Constable of Windsor Castle* is always *Chief Warden of that Forest*.

The only Statute, which I can find relating to this Matter, is that of 1 Ed. 3. by which 'tis enacted, that if 1 Ed. 3. any Person is taken in the very Act, c. 8. and imprisoned, or indicted for the *Vert* or *Venison*; the Chief Warden of the Forest shall let him to * Main-

* Main-
prise
prise sig-

nifies the receiving a Man into friendly Custody, who otherwise would have been committed to Gaol; and those who undertake for the Appearance of the Party, are called Mainpernors, because they take him into their Hands; and this differs from Bail; for he who is thus mainprised, is said to be at large from that very Time, to the

Day of his Appearance; but he who is bailed, is not at large, or at his own Liberty by the Forest Law, because the Persons who are his Bail, may keep him in Custody till the Day of his Appearance if they will; for till then he is by Law accounted to be in their Ward. See Manwood 1 Part 167, and 4 Inst. fol. 179.

prise until the Eyre, without taking any Thing for his Deliverance; which if he refuse to do, then the Party grieved shall have a Writ out of the Chancery, of old ordained for Persons indicted to be bailed till the Eyre; and that if upon the Service of such Writ, the Warden will not deliver the Person indicted to Mainprise, then he shall have another Writ out of the Chancery, directed to the Sheriff of the County, &c. to attach the Warden to answer his Default before the King at a certain Day; and then the Sheriff (having called the Verderors to him) shall deliver the Person indicted by good Mainprise, in the Presence of the said Verderors, and shall deliver the Names of the Mainpernors to the same Verderors, to answer in the Eyre before the Justices.

And if the chief Warden be thereof attainted, he shall be awarded to pay treble Damages to the Party grieved, and be committed to Prison, and be ransomed at the King's Will.

Warren

Warren and Warrener.

A *Warren* is a Parcel of Ground privileged either by the King's Grant, or by Prescription, to preserve *Hares* and *Conies*, which are properly *Beasts of Warren*; though my Lord Coke tells us, there are also Fowls of Warren, and of those there are two Sorts, (*viz.*) *Campestres*, as *Partridges* and *Quails*, &c. and *Silvestres*, as *Pheasants*, &c. to which he adds *Aquaticiles*, as *Mallard*, *Hern*, &c. but that no Person can make a Warren, and appropriate these Creatures to himself, and to his own Use, without the King's Licence, because they are *feræ naturæ*, in which no Subject can have a Property; and in such Case the Property is in the King, therefore no other Person can have it without his Leave.

The first Statute made concerning 21 Ed. 1. Warrens, was *Anno 21 Ed. 1.* called the Statute *de malefactoribus in parcis*; by which 'tis enacted, That a *Warrener* finding a Trespasser within his Liberty, intending to do any Damage therein; and not yielding himself

Warren and Warrener.

self after he is called to stand to the Peace, but continuing to disobey such Call; or if he flies or defends himself with Force and Arms, and is killed by the Warrener, he shall be indemnified, so as he did it not of Malice before that Time, pretending the Person was a Misdoer when he was not; for in such Case he shall be prosecuted, and suffer as any other Subject.

* 27 Ed. 1. The next is * *Ordinatio de perquirendis libertatibus*; by which 'tis ordained, That he who would purchase a Warren must first be sent into the Exchequer to make his Fine; and from thence to the Chancellor of the Exchequer, or his Deputy, for that which he ought to do therein.

1 H. 7. By the Statute 1 H. 7. 'tis enacted,
cap. 7. That he who *hunts in a Warren in the Night-time, or disguised*, shall be brought before a Justice to be examined; and if he conceal the Fact, and 'tis proved against him, 'tis Felony; but if he confess it, 'tis only a Misdemeanour, and finable at the next General Quarter-Sessions; and here a Rescous of the Execution of the Warrant, by which the Offender
was

was to be brought before the Justice, is Felony.

None shall (without the Licence of ^{3 Jac. 1.} the Owner) kill or chase any Conies ^{cap. 13.} in *any enclosed Ground*, on Pain to suffer three Month's Imprisonment, and pay treble Damages to the Party grieved, to be assessed by the Justices before whom convicted.

But this Act doth not extend to any enclosed Ground hereafter to be made or used for Conies, without the King's Licence.

Any Person who is Owner or ^{22 & 23} Keeper of a Warren stock'd with ^{C. 2. c. 25.} Conies, is allowed by the Law to keep a *Gun*, &c.

He who takes or kills in the Night-time Conies upon the Borders of Warrens, or on other Grounds used for keeping Conies, except the Owners, &c. shall make such Recompence, as the Justice before whom he is convicted, and within such Time as he shall appoint, and pay to the Overseers of the Poor of the Parish where the Offence was done, such Sum as the said Justice shall think fit, not exceeding 10 s. and in Default thereof, to be sent to the House
of

of Correction for any Time not exceeding a Month.

4 & 5 W.
c. 23.

Lords of Manors, and other Royalties, or any other Person authorised by them, may within their respective Manors and Liberties oppose and resist Offenders in the *Night-time*, using any Instruments for the Destruction of the Game, as if such Fact had been committed in any antient Warren enclosed.

9 G. c. 22.

Armed and disguised, and appearing in any *Warren* or Place where *Hares* or *Conies* are kept, or shall rob any Warren or Place where they are kept; or if any Person shall by Gift or Promise of Money, or other Reward, procure any other to join with him in any such unlawful Act; every Person so offending, and being thereof lawfully convicted, shall be adjudged guilty of Felony, and suffer Death as a Felon, without Benefit of Clergy.

Law Cases.

Where a Man is seised of a Ma- Bro. Abr.
 nor, in which he had a Warren, and Tit. War-
 made a Feoffment of the said Manor ren.
cum pertinentiis ; it was held, that
 the *Warren* did not pass, because 'tis 4Inst.318.
 a collateral Inheritance, and doth not
 issue out of the Soil ; but this Case
 is denied to be Law, for it hath been
 since adjudged, that by a Grant of a
 Manor *cum pertinentiis*, the Warren
 will pass.

T. S. had a Warren in another 3 Bulst.
 Man's Land, and afterwards he grant- 82.
 ed the said Warren to E. G. Adjudg- Cro. Eliz.
 ed, that by the Grant of the Warren 547. S. C.
 the Soil did not pass, probably for the
 Reason mentioned in the last Case,
 (*viz.*) because a Warren is a collate-
 teral Inheritance, and doth not issue
 out of the Soil.

So where one Man was Lord of Lord
 the Manor of H. in which Manor Moun-
 another Man had a *Warren* belonging son's Case.
 to the Manor of D. and afterwards Cro. Car.
 both these Manors came into one
 Hand, by the Purchase of the Manor
 of

4 Inst. 318. of D. Adjudged, that by the Union
 So adjudg- of the Land and the Warren, that
 ed in the the Warren was not extinct, but still
 Case of a remained.
 Chase.

2 Roll.
 Abr. 567.

If a Man springs a Pheasant on his
 own Land, and his Hawk flies at it,
 and pursues it into the Warren of
 T. S. the Owner of the Hawk can-
 not justify the Entry into the War-
 ren, and taking both the Hawk and
 Pheasant; but 'tis otherwise if the
 Soil was not a Warren.

Sir Rich. Sir Richard Harrison claimed a
 Harri- Warren by Prescription in *Windsor*
 son's Case. Forest, and the Attorney General Noy
 W. Jones at a Justice-Seat held for the Forest
 280. affirmed, that the Claim was not good,
 unless it had been *allowed in Eyre*;
 and therefore he being presented for
 the Warren was fined 10 s. and it
 was ordered, that the Warren should
 be destroyed.

An Indictment for riotously Entring
into a Warren.

Wils. ff. **J**Uratores pro Domino Rege
super sacra sua præsésentant
quod Will'us Wild de H. in Com'
prædict' Yeoman 20 die Februarii An-
no regni Domini nostri, &c. duode-
cimo apud Albourn in Com' prædict'
Vi & armis, &c. riotose routose &
* illicite sese assemblerunt & sic rio- * After
tose routose sese assemblat' liberam War- the Word
renam Philippi Comitis Pembroke vo- illicite, it
cat' † Southward riotose routose & il- should
licite fregerunt & intraverunt ac Cu- havebeen
niculos ipsius Comitis in libera War- adtunc &
rena prædict' adtunc & ibidem existen' ibidem as-
sembl'. sembl'.
& depascen' riotose routose fugaverunt † It
& Venati sunt ac quatuor mille Cu- should
niculorum ad Valentiam Centum li- havebeen
brarum adtunc & ibidem invent' rio- apud Al-
born præd'.
tose routose & illicite fugaverunt ce-
perunt & asportaverunt contra pa-
cem, &c.

I have not transcribed this Indict-
ment as a Precedent, because 'tis de-
fective, but only to shew where the
Fault is, that it may be avoided in
drawing

drawing a good Indictment of the same Nature, though it may be reasonably presumed, that this Indictment (faulty as it is) was drawn by very good Advice, because it was prosecuted by a noble Earl; but the Fault was thus.

ff. It did not appear in what Place this Warren was, though it was insisted it must be at the Place where the unlawful Assembly was, and that was at Albourn; which is very true, if it had been *adtunc & ibidem assemblat'*; but these Words are omitted in the former Part of the Indictment; and though they follow in the later Part, (*viz.*) in *liberam Warrenam predict' adtunc & ibidem existen'*, they cannot refer to Albourn in the Beginning of the Indictment, but *ad proximum antecedens*, which is the Warren.

Widgeon.

By the Statute 9 *Annæ* 'tis enacted, 9 A. c. 25.
 That if any Person shall between the
 1st of *July* and 1st of *September* in
 any Year, by *Hays*, *Tunnels*, or other
Nets, drive and take any *Widgeon*,
 or other Water-fowl, in any Place of
 Resort for wild Fowl in the moulting
 Season; and being convicted thereof
 before one Justice where the Offence
 shall be done, by the Oath of one
 credible Person, he shall forfeit 5 s.
 for every Widgeon or other Fowl,
 to be divided between the * Poor * Of that
 and the Informer, to be levied by a *Parish*
 Warrant of that Justice before whom *where the*
 the Offender was convicted by Di- *Offence*
 stress and Sale of his Goods; and for *was com-*
 Want of Distress to be sent to the *mitted.*
House of Correction not exceeding
 one Month, nor less than fourteen
 Days, there to be whip'd and kept to
 hard Labour.

Wild.

Wild-duck.

The same Law, Conviction and Punishment for driving and taking any *Wild-duck*, or other Water-fowl in the *moulting Season*, as for driving and taking a *Widgeon*; which see before under that Title.

Wood

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Wood in a Forest.

The Woods of several People which were growing contiguous to Forests, were by the *Norman Kings* taken into, and made Part thereof, without the Consent and against the Will of the Owners; but the Freehold of the Soil on which such Woods did grow, was still in the lawful Proprietors thereof, yet subject to the Laws of the Forest; so that they could not fell Timber, though on their own Lands, (when once taken into the Forest) without *View of the Foresters*, and a Licence from the Justice of the Forest so to do; because the King claimed a *Prerogative* over the Woods in the Forest, in Order to preserve the Game, which could not be done without Woods and Coverts to defend them.

Therefore such Woods could not be cut down without the Leave of the *Chief Justice in Eyre*; and this being thought a Grievance to the Subject, it was afterwards remedied by the * Charter of the Forest, by * Ch. 3. which it was declared, that all Woods

O which

which had been taken into the Forests, from the * Beginning of the Reign of *Rich. 1.* to the Time of the † 1216. † Coronation of *Hen. 3.* should be restored to the right Owners.

§ Hen. 3. And being thus restored, the § King granted by the same Charter, that the Owners should be quit of *Purprestures*, *Wastes* and *Affarts*, made heretofore in the said Woods, (*i. e.*) If any of the Owners had encroached on the Crown-Lands, which lay near their Woods, and had enclosed the same to their separate Use; this was called a *Purpresture*, and finable at the Discretion of the Chief Justice in Eyre; so if any of them had cut down Woods, or thick Coverts, without Licence of the Chief Justice, this was *Waste* by the Forest Law; or if any of them had grubbed up Woods or Coverts by the Roots, and had converted the Soil into *Tillage*; this was called *Affart* of the Forest.

For though the Woods were restored to the lawful Owners, yet those Owners, or their Heirs were still punishable for any of these Offences, which had been done by them,

them, whilst their Woods were Part of the Forest.

Afterwards by the Statute 1 Ed. 3. 1 Ed. 3. it was provided, That every Man ^{c. 2.} having Woods in the Forest might take * House-bote and † Hey-bote in * (i.e.) ^{Right to} his Woods, (which he had in the ^{take Tim-} old Forests) without being attached ^{ber to re-} for the same by the Officers of the ^{pair his} Forest, so that it be done by the ^{House.} *View of the Foresters.* † *A Right to take*

Wood necessary for making Hedges.

And by the Statute 22 Ed. 4. 'tis 22 E. 4. enacted, That where a Man hath ^{c. 7.} Woods in his own Ground within the old Forests, and shall cut them down by the King's Licence, where the *Forest, Purlieu, or Chase* belongs to the King, or without Licence where they belong to the Subject, he may enclose the Soil for seven Years next after such cutting down.

And by the Statute 35 H. 8. 'tis 35 H. 8. provided, That where other Persons ^{c. 17.} have *Common in Woods* in a Forest, the Owner of the Soil may enclose a fourth Part thereof, to be cut down at his Pleasure; but that no Beast shall come into such Enclosure with-

Wood in a Forest.

in seven Years next after 'tis felled ; and that during those seven Years, those who have Right of Common there, shall be excluded from their Common.

Law Cases.

Upon the Statutes before-mentioned, the following Cases have been adjudged.

*Sir Franc.
Barring-
ton's Case.*
8 Rep.
136.
*See Chalk
and Pe-
ter's Case.*
Godb.
167.

ff. That the Statute 22 *Ed.* 4. was a Conveyance, and did not extend to the Right of a Commoner in a Forest, who is a third Person ; and because several Points relating to this Matter were resolved in that Case, I shall briefly recite it.

ff. A Grant was made of a Wood in a Forest, in which the Plaintiff had *Right of Common*, which Grant was confirmed by a Statute ; and afterwards the Grantee cut down Wood, and enclosed the Soil on which it had grown ; and the Question was, whether the Plaintiff who had *Right of Common* should lose it for seven Years ; and it was adjudged,

1. That though the Grantee had not the Inheritance, but only an Au-

Authority to take Wood in another Man's Soil; yet he may enclose by Virtute of the Statute 22 *Ed.* 4.

2. It was resolved, That the said Statute extends to Wood, which Men had in *Severalty*, and not to Woods where they had a Right of *Common* before; for at Common Law, he who had a Wood in a Forest could not enclose against one who had a Right of Common in such Wood; but if it was his *several Wood*, he might enclose *parvo fossato* only; and that for no longer Time than three Years.

3. That this Statute is a Conveyance between the King and his Subjects, which doth not take away the Right of a third Person, as he is who hath a *Right of Common* in the Woods.

4. There is a Clause in this Statute, that he who cuts down Wood, may enclose without suing to the King, or other Owner, &c. so that this Power is established against them, but not against another who hath a *Right of Common* in the Woods; therefore by this Statute it seems, that he is not barred of his Right of Common for seven Years.

35 H. 8.
c. 17.

And this may be the Reason of inserting a Clause in the Statute 35 Hen. 8. above fifty Years afterwards, (*viz.*) that where there is a Wood or Coppice, wherein others have Right of Common, the Owner of the Soil shall not cut down the same (except for his own Use) before he and the *Commoners* shall agree in setting out a fourth Part thereof, to be severally enclosed for the Use of the said Owner; and if any Beast is suffered to come into such fourth Part, *within seven Years* after the Wood is cut down, he whose Beast it is shall forfeit for every one 4 s. so that by this Statute, he is barred of his Common for seven Years.

It was likewise resolved in Sir Francis Barrington's Case last mentioned, that the Statutes relating to Forests are general Laws, because they concern the King; and therefore the Common Law Courts are to take Notice of them.

Earl of
Pem-
broke,
Lord
Berkley.
Poph. 116.
Goulds.
130. S. C.

A Forester cut down Timber-Trees growing in the Forest; this was adjudged a *Forfeiture of his Office* at Common Law, as well as by the Laws of the Forest; for this Officer hath not only the Charge of the Game,

Game, but of every Thing in the Forest, by which the Deer may be fed; and by the Charter of the Forest 'tis prohibited to cut down Wood there *Nisi per Visum forestarii*; and therefore every voluntary Act done by an Officer contrary to his Trust, and to the Duty of his Office, is a Forfeiture thereof.

Certiorari to the Chief Justice in The Duke's Eyre of the Forest of Pickering, to remove a Record before him into B. R. the Defendant being presented for cutting Wood in a Place where the Duke of Newcastle (who was Chief Justice in Eyre in that Forest) claimed the Soil, on which the Wood did grow; it was objected against the Granting this Writ, that the Court of King's Bench had no Jurisdiction in this Case, because it was an Offence punishable by the Forest Law; but it was ruled, that though a *Certiorari* might be granted, yet it should not in this Case, because the Defendant was only presented for cutting Wood; he was not convicted for so doing; now where the Offence is only presented, 'tis punishable by the Regarders according to the Forest Law; but such Punishment shall not

of Norfolk v. Duke of Newcastle. Sid. 296.

Wood in a Forest,

conclude the Right of the Party from bringing an Action of Trespass at Common Law, wherein he may recover Damages, if he had any.

Wood in a Forest, and of Woodward.

The *Woodwards* must present all Offences within their Charge at the Court of *Attachments* or *Swainmote*, to the Chief *Foresters* or *Verderors*; their Office doth not only concern the Woods in the Forest, but all Offences committed either in the *Vert* or *Venison*, which shall be in their Charge; and if they see or know any Malefactors; or if they shall find any Deer killed or hurt, they must acquaint a Verderor therewith, and present the same at the next Court of the Forest, and in these Particulars his Oath doth consist; but he cannot make any Attachments; and by the Law he must not walk with Bow and Arrows, but with a Forest-Bill or Hatchet.

W. Jones
178.

Where the King hath a Wood in his own Land in a Forest, and *leaseth* the same to another, the *Lessee* ought

to provide a *Woodward*; and if he doth not appear at the Courts of the Forest, the Wood shall be seised, and the Office of a *Woodward*; the Law is the same where a Subject hath a Wood in the Forest.

A Seifure being made of the Lord W. Jones *Lovelace's* Wood, for a Fine of 13 s. 270.

4 d. the same was staid at the Justice-Seat; but his Claim of a Privilege to fell Wood in the Forest, without Licence or View of the Foresters, was not allowed; though in 1 *Inst.* a *Prescription* to fell and sell Wood without View was held good; but at a Justice-Seat held for the Forest of *Windsor*, that was held to be no Law.

For in *Whitlock's* Case it was held Whitlock's Case. W. Jones 268.
at a Justice-Seat, that a Man may fell Woods in a Forest for the Fire, or other necessary Boots, by the View of the Foresters or Verderors, but not to *sell* without the Writ *ad quod damnum*; and that if a Forester takes Ibid. 277.
any Thing for his Viewing, 'tis Extortion.

It was agreed at the said * Justice-Seat, that the Chief Warden of the Forest could not grant a Licence to sell Trees there; nor the Chief Justice

Wood in a Forest,

fice in Eyre, unless 'tis granted *sedente Curia*, or after a Writ *ad quod damnum*.

Sir Charl. The Defendant was presented for Howard's felling Timber-Trees in *Windsor Forest*; and thereupon he at the Justice-Seat produced the King's Warrant in these Words, (*viz.*) *Whereas Bagshot Rails are in Decay; therefore he (the Defendant) should cause as much Timber to be felled, as would be convenient for the Repair thereof;*

W. Jones.

and this was held to be no good Warrant, because the Decay of the Rails ought first to be *viewed*, and an Estimate to be made thereof; and then such a Warrant might be granted, but not before.

W. Jones
268.

At the same Justice-Seat it was held, that a *Presentment* made by all the Officers of the Forest, that Wood and Timber was felled there, and by whom, is sufficient Evidence to convict the Offender; and in *Whitlock's Case* before-mentioned, no other Evidence was given.

W. Jones
275.

The Inhabitants of *Egham*, and of all the Towns in *Surrey* within *Windsor Forest* joined in a Claim to cut down their Coppices at Pleasure; and Noy the Attorney General insisted

ed at a Justice-Seat, that since the
 * Charter of the Forest was made, a * Ch. 4.
Prescription to cut down Wood there,
 is not good ; for by that Charter it
 was granted, that all Freeholders
 should have their Woods in Forests,
 as they had them at the Time of the
Coronation of H. 1. which was above
 120 Years before that Charter was
 granted ; nay, a Prescription to cut
 down Wood *per Visum* of the Fore-
 sters and Verderors is not good, for
 it must be *per Visum & allocationem,*
&c. because if 'tis *per Visum, &c.*
 only ; then if a Forester or Verderor
 is required to view it, and he re-
 fuseth, it may be cut down without
 View.

An Underkeeper being presented at Rowland
 the said Justice-Seat for cutting un-Raply's
lawful Brouse-Wood, said in his De-Case.
 fence, that he cut it by the King's W. Jones.
Order to sell, and with the Money 279.
 to buy Hay for the Deer in hard Wea-
 ther ; the Attorney General said, that
 the King's Commands ought to be
 obeyed ; but that there is a legal
 Way to put them in Execution.

So where one was presented for Clifton's
selling and carrying away seven Tim-Case.
ber-Trees ; he insisted at a Justice- W. Jones
 Seat, 279.

Seat, that those Trees were cut down to repair a *Bridge*, which the King ought to repair, and that they were employed accordingly, and that the Lops were sold to pay the Workmen with the Money arising by such Sale; and though the Verderors affirmed, that the Timber was employed as aforesaid, yet he was fined 5 s. for his undue taking the Trees.

W. Jones
295.

Though a Man may cut down his own Woods in a Forest for necessary Boots, without View of the Foresters or Verderors; yet some Officer of the Forest ought to present it at the next *Court of Attachment*, and how much was felled, and that they had seen it, that it may appear on Record what Quantity was cut down.



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